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No. 15280

**United States
Court of Appeals
for the Ninth Circuit**

MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

**Transcript of Record
In Four Volumes**

**Volume II
(Pages 445 to 864)**

FILED

APR 24 1957

PAUL P. O'BRIEN, CL

**Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.**



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**Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.**



(Testimony of Miles H. Robinson.)

“Q. I will now read the portions you have checked off as pertaining to Dr. Miles H. Robinson:

“ ‘Appeal of Dr. Miles H. Robinson, Walla Walla, Washington.’

“ ‘Dr. Lull read the following telegram which he has sent at the request of the [742] chairman rendering the decision of the Council with respect to the appeal of Dr. Miles H. Robinson from the decisions of the Walla Walla Valley Medical Society and Washington State Medical Association, expelling him from membership in those organizations.

“ ‘The appeal to the Judicial Council of the American Medical Association of Dr. Miles H. Robinson, Walla Walla, Washington, from the decision of the Washington State Medical Association by which Dr. Robinson was expelled from membership in the Washington State Medical Association and the Walla Walla Society sustained by the Judicial Council, and the decisions of the constituent and component societies in this matter are reversed.

“ ‘Dr. Lull stated that three telegrams had been sent addressed to Dr. R. H. Benson, president of the Washington State Medical Association; Dr. Morton W. Tompkins, president of the Walla Walla Valley Medical Society; and Dr. Miles H. Robinson, and had been signed Edward R. [743] Cunniffe, M.D., chairman, Judicial Council, American Medical Association.

“ ‘Mr. Holloway informed the Council that Mr. Ralph Neill, executive secretary of the Washington

(Testimony of Miles H. Robinson.)

State Medical Association, had asked him what the effect of the decision was and he had told Mr. Neill that the whole expulsion proceeding was abrogated.

“ ‘After discussion, during which it was pointed out that the Council had never found Dr. Robinson innocent but that the procedure of the County and State Societies was wrong throughout, it was moved by Dr. Donaldson, seconded by Dr. Lukins, and carried, that a letter should be sent to Dr. Robinson telling him that the effect of the ruling of the Judicial Council on his appeal is to place his situation in status quo as of the time prior to the decision by the County Society, and he is still a member, and that copies of the letter should be sent to the presidents of the County and State Societies. The Chairman stated that he [744] could write such a letter.’ ”

Mr. Rosling interposed: “Is that could or would?”

“Mr. Schwartz: Could.

“The Witness: Mr. Schwartz, may I volunteer a statement there? That last sentence indicates the position in which I find myself in attempting to answer this subpoena completely. The chairman stated that he could write such a letter. I have no record that he did write the letter, or——

“Mr. Schwartz: I see.”

And I believe that that concludes the pertinent portions of the deposition at this time.

Mr. Rosling: And to what page did you read?

Mr. Sembower: To Page 53, eight lines from the top.

(Testimony of Miles H. Robinson.)

Direct Examination
(Continued)

By Mr. Sembower:

Q. Dr. Robinson, I will ask you at this time if you ever received such a letter as was described in the minutes of the Judicial Council which I have just read, if you recall?

A. Never, never received any such letter. [745]

* * *

Q. Dr. Robinson, at the time of the letters which are exhibits in this case written by Dr. Keyes to Drs. Benson and Cunniffe, had you received any information from any of the members of the local society or the state association as to the position being taken by those associations with respect to this decision?

A. I had a conversation with Dr. Keyes on the telephone about this time.

Q. Did you telephone him or did he telephone you? [752]

A. I telephoned him.

Q. At his home or his office?

A. I couldn't tell you. Probably his office.

Q. Please tell us the substance of that telephone conversation, if you recall?

A. Well, I had received Mr. Rosling's letter and I understood from that letter that all I had to do now was to pay my dues, make sure my dues were paid, and I would be back in good standing and

(Testimony of Miles H. Robinson.)

could get my hospital privileges back. So I had two things in mind at the time; one was to pay my dues right away, which I did very soon, and the other thing was I called Dr. Keyes, as I remember, and I have a note of it that I made at the time, and told him that I had got this letter from Mr. Rosling and that I supposed everything was all right. And he told me that he had five letters off to various people and that he had a letter off to Benson and Cunniffe, and he didn't say who else he had them off to, and that he had had no answers from any of them and the society was not going to act on the basis of an unsigned telegram that had come in February the 1st, a few days before.

Q. By that, did he refer to the telegram which had been received from Dr. Cunniffe of the American Medical Association? [753]

A. He didn't—well, I referred to the telegram I had got. I didn't understand from him whether he had got one or not, but he called it an unsigned telegram and I gathered he meant it was not a hand-written signature to something.

But, in any case, the society would not act on that, and he may have said some other things there, I just don't recollect them at the minute.

Q. Then was that the completion of that conversation?

A. Well, that was the main substance of one of my conversations with him.

Q. Did you have any other conversations with him relative to this matter about near this time?

(Testimony of Miles H. Robinson.)

A. Well, I was calling him regularly every week or two. The next thing I remember was paying my dues. I sent my dues in to Mr. Fullerton, the secretary of the society, and I never heard anything back, there was no acknowledgment for two or three weeks, and I called Dr. Keyes about it and he said, "Oh, we got your check, all right." I said, "You haven't cashed it, why not?" "Well," he said, "the check is over in the bureau office there." He says, "You can go over and get it if you want." And I said, "Well, I don't want the check, I want you to cash it."

Well, that is all we had to say on that [754] subject.

Mr. Sembower: I have a little more legible copy now of Plaintiff's Exhibit 165.

The Clerk: 168, isn't it?

The Court: 168?

Mr. Sembower: 168.

The Court: Shouldn't that be substituted for the copy you had in before?

Mr. Sembower: I think it should be.

The Clerk: Are they both there?

Mr. Sembower: They are both here.

The Court: Just withdraw the former one and put in the more legible copy and it will be Plaintiff's 168.

Mr. Sembower: Yes.

A. I recall further, if I may on that——

Q. What does that refer to now?

A. My conversation.

(Testimony of Miles H. Robinson.)

The Court: The conversation?

A. With Keyes, Dr. Keyes.

Q. (By Mr. Sembower): With Dr. Keyes.

A. When he said that "We can't act on this unsigned telegram," I said, "Well, won't you call Dr. Cunniffe in New York, the Chairman of the AMA Council?" I said, "Telephone him. It is hard to get action out of these people unless you go after them, and," I said, "I will be glad to pay for the telephone call at my own expense [755] if you would just call them and let him confirm over the telephone that he really did send this telegram reinstating me in the society."

And I remember very well what he said, he said, "Well," he said, "that is a good idea, Miles." He said, "We will take it under advisement, as the big shots say." [756]

* * *

Q. Dr. Robinson, what at this stage of the matter did you do further with respect to the hospitals?

A. Oh, yes. Oh, just as soon as Mr. Rosling's letter came through of February 14th, within a few days, I believe, here in 1952, I wrote both hospitals and told them that the AMA had reversed everything, and I think I enclosed a copy of Mr. Rosling's letter as authority that I was now eligible for membership, and I told them I had paid my dues and I asked them to give me back my hospital privileges.

(Testimony of Miles H. Robinson.)

Q. Did you receive any response from them, if you remember?

A. Yes, I received no response at all from St. Mary's [762] Hospital, but the General Hospital, as I recall, about this time told me I could bring my patients to their hospital. Now, it may have been that they told me that a little later, but I think it was about this time. The letter will show. [763]

* * *

Mr. Sembower: I will read this exhibit, Plaintiff's Exhibit 182, a letter from L. E. Hubbs, Manager, Walla Walla General Hospital, to Miles H. Robinson, M.D.:

"Dear Doctor Robinson:

"As far as the management of the Walla Walla General Hospital is concerned, you may bring your patients to this hospital."

Q. Dr. Robinson, referring to Plaintiff's Exhibit 182, which has just been read, after you received this letter, what did you do? [775]

A. Well, the next time I had a patient to hospitalize, I did so at the General Hospital.

Q. Did you discuss the matter any further with St. Mary's Hospital?

A. Yes, I did; I telephoned.

Q. And who did you telephone at St. Mary's, if you recall?

A. Yes, I spoke to the Sister Superior down at St. Mary's.

Q. Had you talked with her previously so you recognized her voice?

(Testimony of Miles H. Robinson.)

A. Yes, she had a strong French accent, I knew her voice very well.

Q. Will you tell us, in substance, what you said to her and what she said to you?

A. Well, I reminded her that I had written her some week or weeks before telling her that I was now reinstated in the society, to the best of my knowledge, and asked her why she hadn't answered my letter, and she said—

Q. To what letter do you refer?

A. Well, I think I wrote her on February the 18th or around then enclosing Mr. Rosling's letter and the photostat of the AMA telegram, and, well, the letter will show.

Q. I just wanted to identify it so we know what you are testifying about. What did she then say about the letter, if anything?

A. I remember very well. She said, "The doctors don't want [776] you back." And I said, "I suppose you mean the doctors on the staff at St. Mary's?" and she said, "Yes."

And then I said, "Well—" Well, there was a couple of conversations I had with her, but in this conversation or in another a little later, I said, "Has the matter been brought up at a staff meeting?" and she said, "No." And I said, "Well, don't you think you could bring it up at a staff meeting?" and she said, "Well, we don't have to take you back if we don't want to. We can take anybody we want or not take anybody that we want, and we don't have to take you back."

(Testimony of Miles H. Robinson.)

And that is all that was said in the conversation.

Q. You stated that you had another conversation with her on another occasion. When was that, if you recall?

A. Well, I don't recall at the moment, but it was essentially the same subject and the same things were said. [777]

* * *

Q. Dr. Robinson, with reference to the exhibit just read, No. 195, did you subsequently receive a copy of the constitution and bylaws referred to in the letter? A. Yes.

Q. Approximately when did you receive that, if you recall?

A. I really can't say whether it was a week or two or a month, but I think the record shows when this did come in.

Q. Well, did you have, prior to this time, a copy of the bylaws and constitution of the state association?

A. We looked that up last night, I think it was, and I have a letter from Mr. Fullerton, or a note, memorandum by him that he sent me a copy a few days or a week, maybe, before the hearing at Los Angeles in 1951.

Q. A copy of the bylaws and constitution of the state association?

A. Well, I think, I think that is what the note says. I am not sure when it came in, but I had asked the state medical association and this letter

(Testimony of Miles H. Robinson.)

you just read refers to a new constitution that was printed up.

Mr. Rosling: You mean a new edition, not a new constitution.

A. Well, since you mentioned that, it was a new constitution. By that, I mean different, because the one that Mr. Sembower is holding in his hand is one which has a great many stapled things in it and it does not have in it the [783] bylaw establishing the state grievance committee, which was done in September of 1950, whereas the printed constitution, which is dated 1951, does have that bylaw placed in it.

Mr. Sembower: For the record, I am holding in my hand Plaintiff's Exhibit for identification—I beg your pardon, it has been admitted—Plaintiff's Exhibit 296.

Q. Dr. Robinson, did you have in your possession any other copy of the constitution and bylaws of the Washington State Medical Association other than 296 prior to the one which you received pursuant to the letter of Mr. Neill, which is Exhibit 195?

A. No, I had no other copy of the constitution.

Q. Had you made diligent efforts to secure the same?

A. Yes, I had. I called over to the state, telephoned, in fact it seems to me, in the fall of '51, and I asked for a copy of the constitution, and the question was immediately asked me, "What do you want it for?"

(Testimony of Miles H. Robinson.)

Mr. Rosling: If your Honor please, I am going to object to this until we find out who was at the other end of this line.

The Court: Yes, I think you should specify time and place and the person.

Q. (By Mr. Sembower): It is a minor point, but I will ask, Dr. Robinson, you telephoned the Washington State Medical [784] Association in Seattle? A. Yes.

Q. And when you telephoned, who did you telephone at the Association? Was it a station-to-station call, or person-to-person?

A. Well, it was a station-to-station call.

Q. And was the call then completed?

A. Yes, an employee of the state association answered.

Mr. Rosling: I object to that, your Honor. That is pure assumption on the part of the witness, and I ask the answer be stricken.

The Court: Well, I think it should be stricken.

Mr. Sembower: I think it should be.

The Court: He can say that someone answered and we can raise our own presumption.

Mr. Sembower: Really, your Honor, it is not a vital point, I will just drop the line of questioning altogether.

The Court: He made the inquiry, anyway.

Mr. Sembower: That's right, he made the inquiry. That is all we are interested in.

Mr. Rosling: Mr. Sembower, may I ask, just to refresh my recollection, was your question was

(Testimony of Miles H. Robinson.)

there any other copy other than the old copy you have there?

Mr. Sembower: Yes.

Mr. Rosling: I see. [785]

Mr. Sembower: That was the question.

Q. Dr. Robinson, did Mr. Fullerton send you a copy of the state association bylaws and constitution?

A. My recollection is he gave me a copy. I went up to his office and, I am not positive of this, but it has been so long ago, but my recollection is that he gave me one of these copies that is full of stapled additions from many years back and he said it was the only one that he had. He either gave it to me or lent it to me. I think he gave it to me.

Q. All right, we will leave that matter.

Dr. Robinson, did you have any conversations with any of the defendants with reference to the authenticity of this telegram which had been sent by the Judicial Council to the local society and the association?

A. Yes, as I mentioned earlier, I talked to Dr. Keyes about it.

Q. Did you confer with anyone else besides Dr. Keyes?

A. Well, I talked to Dr. Carlson about it also.

Q. Where did you have a conversation with Dr. Carlson, if you recall?

A. In the waiting room of his office in the Birch Street Clinic.

Q. Do you remember about when?

(Testimony of Miles H. Robinson.)

A. I really don't. It was around about this [786] time.

Q. Was there anyone else present?

A. Well, yes, his secretary was right behind the counter there.

Q. Could you tell us what you said to him, approximately, and what he said to you on that occasion?

A. All I remember about that conversation is he said, "We are waiting for further information," and he had very little to say about it.

Q. Did he say that he doubted the authenticity of the telegram?

A. Well, he repeated what Dr. Keyes had said, and this I do remember, that the society could not act on an unsigned telegram.

Q. But did he express any opinion as to whether he himself thought it was authentic or not?

Mr. Tuttle: If the Court please, let's let the witness testify. I object to the leading question.

The Court: Yes, it is leading, Mr. Sembower.

Mr. Sembower: I have Plaintiff's Exhibit 249 for identification and ask that it be admitted.

The Court: 249 is that? 249 will be admitted.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 249.)

Q. (By Mr. Sembower): Dr. Robinson, I hand you Plaintiff's [787] Exhibit 249 and ask you if you have seen it before? A. Yes.

Q. What is that document?

(Testimony of Miles H. Robinson.) . . .

A. That is the text of the AMA's decision which they rendered in December, 1951, at Los Angeles.

Q. Do you remember when you received it, about?

A. Yes, I remember exactly.

Q. When was that?

A. Well, this text arrived in the mail on the 29th of March, 1952, by air mail.

Q. And did you ascertain where it came from? Were you able to ascertain?

A. Oh, yes, it came in a long envelope with Dr. Cunniffe, his name and address printed in the upper left-hand corner.

Q. Of the envelope?

A. Yes, of the envelope.

Q. Is this, shall we say, the long-awaited statement of the opinion which has been referred to in numerous exhibits up to this point? A. Yes.

Q. Of the Judicial Council, if you know?

A. That's right.

Mr. Sembower: I will read Plaintiff's Exhibit 249, which states: [788]

"In the Matter of the appeal of Miles H. Robinson, M.D."—

Mr. Rosling: Pardon me, Mr. Sembower, you have started right at the beginning, have you not?

Mr. Sembower: I have.

Mr. Rosling: In other words, there was no heading, no date?

Mr. Sembower: No, Mr. Rosling. There is no

(Testimony of Miles H. Robinson.)

point in argument as long as I have asked questions of the witness.

Mr. Rosling: There is nothing improper in anything I said, your Honor.

Mr. Sembower: Does counsel object to it?

Mr. Rosling: I just want to make it clear that there is no date, no heading, or anything. I can't tell whether counsel starts with the body or whether he starts from the top of the page.

The Court: Well, all right, go ahead.

Mr. Sembower: This is an argumentative point, as you know, your Honor.

The Court: Well, I think counsel wanted it to be called to the attention of the Court that it hasn't a heading. I don't think there is anything improper in that. Of course, I am not drawing any assumption or anything, considering it as argument. [789]

* * *

Q. Dr. Robinson, I show you Plaintiff's Exhibit 221 and ask you if you have seen it before?

A. Yes.

Q. What is that document? [793]

A. That is a photostat of the text of the AMA decision that I received on March 29, 1952, and, in addition—well, to explain what it is, I sent this photostat to Dr. Lull and—well, it is a little bit more than that.

I took the photostat of the text which I received and on the bottom of the photostat I typed in, "The above is a true copy of page 1, secretary, Judicial

(Testimony of Miles H. Robinson.)

Council, AMA, George Lull," and drew a line where he could put his signature in to act as a certification, and I did that on both pages and sent it back to him and he signed it, and this is his actual ink signature on the photostat and then he sent it back to me.

Q. When did you receive this back, Dr. Robinson, if you recall?

A. Well, I wrote him once or twice and I think called once about it, and it finally came back on the 18th of April, which was about three weeks after I asked for it.

Q. Did you do anything in addition after you received this certified copy back?

A. Yes, I got that to give the local society and gave them a copy of it and gave the state medical association a copy of it.

Q. Referring to Defendants' Exhibit 447 and referring to the minutes of the special meeting of the Walla Walla Valley Medical Society convened on April 8, 1952, in the classroom [794] of St. Mary's Hospital at 8 p.m., we find here the entry: [795]

* * *

Q. Dr. Robinson, did you at that time have any information that a rehearing might be granted in this case, in this matter, before the Judicial Council?

A. I had no inkling or idea that anything like that was being considered.

(Testimony of Miles H. Robinson.)

Mr. Sembower: I have Plaintiff's Exhibit 198 for identification, and I ask that it be admitted.

The Court: It will be admitted.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit 198.)

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit 198 for identification and ask you if you have ever seen it before?

A. I have seen a copy of this letter, which is just the same as this copy.

Q. Where did you last see it? [797]

A. We obtained this on subpoena in 1953, in March of 1953.

Q. And where was the subpoena served and upon whom?

A. Well, it was served upon the Walla Walla Society here in Walla Walla in the suit which we brought in the Superior Court.

Q. To whom was the communication addressed, if you know?

A. This letter here, you mean?

Q. Yes.

A. Well, this was Appendix 4 of the brief of the Walla Walla Society requesting a rehearing from the AMA.

Q. And was it submitted by the society to the AMA?

A. Well, I assume so, but, of course, I knew nothing about this at that time and, in fact, I never saw the request for rehearing or the brief they sent

(Testimony of Miles H. Robinson.)

with it. I never saw that until we brought suit and obtained it under subpoena.

Q. But this was obtained in the service of that subpoena? A. Yes.

Q. The Wallace A. Pratt, M.D., who is the signatory of this document, is that the same Dr. Pratt who wrote the letters that were admitted in evidence this morning to your brother Walter in Vancouver and your father at Swarthmore?

A. Yes, that is the same and I, of course, recognize the signature there. [798]

Mr. Sembower: Reading from the exhibit, it is dated April 19, 1952:

“In Re—Miles C. Robinson versus the W. W. Valley Medical Society.”

A. May I say, Mr. Sembower, that is April 9th.

Mr. Sembower: Oh, I’m sorry, you are correct. I was reading the “1” as a number one.

“April 9, 1952:

“In Re—Miles C. Robinson versus the W. W. Valley Medical Society.

“This is to certify that I have known Dr. Miles C. Robinson well and his family for over ten years and at the request of the officers of the medical society conferred with him at least three times with a view of resolving the matters in dispute. To improve public relations and carry out the recommendations of the AMA the local society acting in good faith set up a grievance committee.

“The initial dispute began when a patient of Dr. Robinson’s objected to a charge of \$1.50. Dr. Rob-

(Testimony of Miles H. Robinson.)

inson resented the committee's recommendation that the matter be dropped. His attitude was one of defiance assuming interference in his private affairs. He refused to confer with the [799] committee and opposed any and all efforts toward reconciliation.

"It must be understood that repeated and sincere efforts were made by the society and its committee to conciliate and satisfy Dr. Robinson.

"In conclusion I might add there was abundant evidence of dissatisfaction and dispersion of his patients prior to this dispute which increased and the Doctor unfortunately believed this due to professional persecution. Decidedly such was not the case.

"/s/ WALLACE A. PRATT, M.D."

Q. Dr. Robinson, do you know to what Dr. Pratt refers in the last paragraph?

A. Well, I assume he refers to what happened after I was expelled from the medical society.

Q. Was Dr. Pratt intimately informed of your practice and his status?

A. Well, now, his office was next door to mine in the Drumheller Building, but I don't know just how he knew so much about things. His door was often shut and how he could know who came in and out of my office is a mystery to me.

The Court: I am not sure that I understand just what [800] this document is or in what connection it was written. It was secured by subpoena, you say?

(Testimony of Miles H. Robinson.)

Mr. Sembower: It was procured by subpoena and apparently it is a document which was included among those collected together and transmitted by the society in its application for rehearing.

The Court: Oh, yes; I see.

Mr. Sembower: Yes.

The Court: All right; go ahead.

Q. (By Mr. Sembower): Did Dr. Pratt have access to your lists of patients? A. No.

Q. Or did he have access to your account books? A. No.

Q. In fact, had your practice dispersed prior to the expulsion.

A. Why, no, not at all. Well, now, I thought you meant for a minute before all this trouble began. Now, if you take before the expulsion, why, yes, there was a lot of dispersion of the practice ever since they brought these charges against me in the fall of 1950. As soon as that—well, that is my conclusion, I was going to say why. But the fact is my practice did fall off very considerably before I was expelled in the six or seven or eight months when this whole matter was going on. [801]

Q. But prior to the Edwards' complaint, what was the status of your practice?

A. Oh, everything was going first rate. There was no dispersion and there was no change in my practice until the grievance committee accused me of overcharging this patient and of threatening this man Brooks.

Q. Dr. Pratt states in this communication that

(Testimony of Miles H. Robinson.)

he has known your family for ten years. Is that a fact?

A. Well, I think we met him once in 1941 when I was in Pasco at the time we met Dr. Campbell, and I never saw him again or had anything to do with him until I came here in 1948, and I have known him casually since we came in 1948, but saw nothing of him at all in between.

Mr. Sembower: I have Plaintiff's Exhibit 197 for identification and ask that it be admitted.

The Court: It will be admitted, 197. [802]

* * *

Q. Dr. Robinson, had you at this time on April the 8th, were you aware of any procedure existing for the calling of a rehearing of a case before the Judicial Council?

A. No. In fact, I was certain that such a thing could not be possible.

Q. On what did you base your certainty?

A. Well, the constitutions and bylaws of the Walla Walla society and the state society and the AMA all specify what rehearings could exist and they do not specify any rehearing of a Judicial Council of the AMA, of any decision by that Council, and, in fact, on the contrary, the AMA constitution specifies that the decisions of the Judicial Council are final.

But, in any case, I had no idea that a rehearing could take place and didn't know that anyone was contemplating one.

(Testimony of Miles H. Robinson.)

Q. And, Dr. Robinson, do you know who the Dr. Berge is who is referred to in that letter?

A. Yes.

Q. Who was he at this time?

A. He was chairman of the state grievance committee of the Washington State Medical Association, and he was also secretary or chairman, at least he was chief administrative officer, of the defense fund of the association which defends doctors against malpractice suits. [807]

* * *

Q. Dr. Robinson, this exhibit is dated April 17, 1952, and it refers to the petition, "Will be heard by the Judicial Council on April 25th in Chicago." Did you at this time, April 17, 1952, have any information of any nature whatever that a rehearing was being considered? A. No.

Q. From any source, did you have any such information?

A. I had absolutely no inkling at all that any rehearing was being considered, and I learned nothing about it until the AMA wrote me on May the 6th, 1952. [813]

* * *

Q. (By Mr. Sembower): Dr. Robinson, referring to Plaintiff's Exhibit 206, which is Dr. Tompkins' letter to Dr. Howard in which he states: "There are several of us here who are frankly fearful of direct violence to us or our families"; do you know of any circumstance that would give rise to that statement?

(Testimony of Miles H. Robinson.)

A. I certainly do not.

Q. Did you ever threaten violence to Dr. Tompkins?
A. Never.

Q. Did you ever threaten any violence to any doctors, any of the doctor defendants in this case?

A. Never.

Q. Or to the members of their family?

A. No.

Q. Did any of the members of your family, to your knowledge, threaten violence against any of them?
A. No. [817]

* * *

Q. Dr. Robinson, did you receive any response to the [821] letters which are the exhibits that you sent to Dr. Brooks and to St. Mary's relative to your status on the staff there, if you recall?

A. I received no response at all from the letter to Dr. Brooks and, so far as I know, no response at all to the letter to St. Mary's.

Q. Did you have any conversations with any persons in an official position connected with St. Mary's at or about this time concerning your status?

A. Well, I had altogether two or three conversations with Sister Joseph down there between the time when the AMA telegram came on February 1st, 1952, and somewhere in July, I guess, of '52, but I have told everything that I can remember of those conversations.

Q. Did anyone at St. Mary's tell you of any reasons other than your ineligibility to membership

(Testimony of Miles H. Robinson.)

A. Never did. [827]

* * *

Q. Dr. Robinson, I show you Plaintiff's Exhibit 227 and ask you if you have seen before the original of this photostatic copy? A. Yes, I have.

Q. What is it, or what was it, Dr. Robinson?

A. Well, that is the statement that I sent in to the AMA in response to their request of May the 6th, 1952.

Q. How many copies did you send to the AMA?

A. Well, I sent them either three or four. I had it mimeographed and sent them mimeographed copies.

Q. Did you send any copies of this to the society and the association?

A. I did not send any copies of that myself to the society or the association. [829]

Q. Was there any reason why you did not do so?

A. Yes. In the first hearing at Los Angeles, they had asked me to send a copy and at this rehearing they did not ask me to send a copy, and I was trying to do exactly what they asked me to do.

Q. Did you have any objection to copies being furnished by the AMA to the state association and the society?

A. No, I had no objection whatever. [830]

* * *

Mr. Sembower: Exhibit 234 is entitled "Opinion of Judicial Council, American Medical Association, on the rehearing of the appeal of Dr. Miles H.

(Testimony of Miles H. Robinson.)

Robinson." It is a certified copy, bears the legend "Certified copy," signed George F. Lull at the bottom, and bearing the seal of the American Medical Association dated June 9, 1952:

"At the request of the Walla Walla Valley County Medical Society, the Judicial Council agreed to hear additional evidence in relation to the appeal of Dr. Miles E. Robinson from a decision of the society expelling him from membership therein. The review hearing was held in Chicago June 7, 1952, after due notices had been sent to Dr. Robinson, to the Walla Walla [831] Valley Medical Society and to the Washington State Medical Association. Supplementary data were submitted by Dr. Robinson, by the society and by the association in the form of written briefs and at the hearing representatives each of the society and the association presented oral statements. Dr. Robinson did not appear in person nor did any personal representatives appear for him. After consideration of the supplementary data presented, the Council remains convinced that the procedures providing for disciplinary measures by the constitution and bylaws of the society extant at the time this case arose were not followed. While the Council does not believe, from evidence submitted, that the irregular procedure followed resulted from any desire to do an injustice to Dr. Robinson nor in fact that the net result would have differed if strict compliance had been made with authorized procedures, the Council is constrained to reaffirm its prior opinion sustaining the appeal.

(Testimony of Miles H. Robinson.)

“The Council, it must be repeated, has no jurisdiction in an appeal case to pass on facts other than those relating to procedure and law. Whether or not, therefore, Dr. Robinson in fact [832] committed acts justifying the disciplinary action taken by the society is a matter that was not and could not be decided by the Council. Granting freely that the society had no intention or desire to perpetrate an injustice on Dr. Robinson, and that in fact it used every reasonable effort to adjust the differences that had arisen, the Council feels that when procedures for disciplining members have been established they should be strictly followed.

“The former opinion of the Council, sustaining the appeal, is affirmed.”

And it bears the typewritten signatures of Dr. Louis A. Buie, Dr. Edward R. Cunniffe, chairman; Dr. Walter F. Donaldson, Dr. Joshua B. Lukins, and Dr. Homer L. Pearson, Jr.

Q. Dr. Robinson, referring to your letter to Dr. Lull to the effect that you were not going to the meeting, did you attend the meeting? A. No.

Q. Were the reasons which you stated to Dr. Lull the reasons that you did not attend the meeting? A. Yes, they were.

Q. When did you receive the opinion of the AMA that I was just reading, Dr. Robinson?

A. It was enclosed in a letter from the AMA dated July 15, [833] 1952, and it came, as I remember, by regular mail and got here, I think it was—well, I know it was July 18, 1952.

(Testimony of Miles H. Robinson.)

The Court: July—

A. 18th.

The Court: 18th.

Q. (By Mr. Sembower): Did you have any information prior to July 18, 1952, of the outcome of the petition for rehearing?

A. It seems to me I heard some rumors somehow or other about the thing, but I had no definite information as to what was going to happen until I got the decision from Dr. Lull. I don't know whether those rumors were from here locally in the society—

Mr. Rosling: If your Honor please, if they are just rumors and he doesn't even know where they came from I ask that his reference to them be stricken.

The Court: They will be stricken.

Mr. Sembower: Yes, they should be stricken.

Q. Dr. Robinson, did you do anything unusual around about the time between June the 9th and July the 18th, June the 9th, when the rehearing was held, and the date on the exhibit for the judgment on the rehearing, and the date July 18th when you received the notice? A. Yes, I did. [834]

Q. What did you do?

A. Well, the rehearing was June the 7th and I waited and waited and heard nothing and I thought, well, I am in the same position I was from the Los Angeles hearing. They are going to wait two or three months or Lord knows how long before they let me know what they have done.

(Testimony of Miles H. Robinson.)

So on the 26th of June, I filed suit, a lawsuit in the Superior Court here in Walla Walla, against all these people.

Q. You say against all these people, do you refer to the defendants in the present suit?

A. The same people exactly.

Q. And the same organizations, corporate defendants?

A. Well, all except the AMA. I did not include the AMA in that suit because I really couldn't—well, I didn't include them.

Mr. Sembower: I have Plaintiff's Exhibit 230 for identification and ask that it be admitted.

The Court: What was the date of that suit, did he say?

Q. (By Mr. Sembower): What was the date?

A. June the 25th.

The Court: Well, approximately?

A. I may have said the 26th.

The Court: Well, approximately. [835]

* * *

Mr. Sembower: The same letter of transmittal with the opinion attached to Dr. Leroy O. Carlson, Secretary of the Walla Walla Valley County Medical Society.

I have Plaintiff's Exhibit 238 for identification and ask that it be admitted.

The Court: It is admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit 238.) [838]

(Testimony of Miles H. Robinson.)

Mr. Sembower: The Exhibit 238 is a letter from Ralph H. Keyes, M.D., President, to M. H. Robinson, M.D.:

“Dear Dr. Robinson:

“At a meeting of the Board of Trustees of the Walla Walla Valley Medical Society, convened the evening of July 21, 1952, the Board, acting on the decision of the Judiciary Council of the AMA, reinstated you to membership in the Walla Walla Valley Medical Society.

“Very truly yours,

“RALPH H. KEYES,

“President.”

I have Plaintiff's Exhibit 239 for identification and ask that it be admitted.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 239.)

Mr. Sembower: Reading from Plaintiff's Exhibit 239, which is a photostatic copy of a letter by Morton W. Tompkins, M.D., dated July 26, 1952, to George F. Lull, M.D., American Medical Association:

“Dear Dr. Lull:

“This is to acknowledge your communication of July 17, from the Judicial Council upholding [839] their reversal in the appeal of Dr. Miles Robinson. This is also to officially notify you that Dr. Robin-

(Testimony of Miles H. Robinson.)

son has been reinstated to the Walla Walla Valley Medical Society.

“The language of your communication was somewhat surprising in that the Council stated that the local society had not followed their procedures. I appeared before the Judicial Council twice and at no times was there evidence that constitutional procedures were not followed. In fact, at the hearing, it was my impression that the Council conceded that we followed our procedures, but the setup of the State Grievance was unconstitutional and on this point the verdict of the society had to be reversed.

“As you have been informed, we are now faced with a suit for \$134,500 by Dr. Robinson. He is making much of your decision in the local papers and has sent his side of the story, true or false, to Medical Economics, who plan to use it in the October issue.

“At no time except in the hearing, has the Judicial Council given a legal resume of this [840] case and the reasons for its decision. Since the Judicial Council hears cases only on law and procedure, it would seem only proper that the local society deserves such an analysis and opinion. Any court or judge hearing a case will give an opinion and the reasons for reaching that decision, pointing out any wrong procedures followed. The decision may not be agreed with, but the reasons for the decision will be clearly stated. The Judicial Council owes the local society such a decision in detail. In fact, we

(Testimony of Miles H. Robinson.)

demand such an opinion for use in our defense of the above suit.

“It became apparent at the Chicago hearing that Mr. Hall was the only one connected with the AMA or the Judicial Council who had even read the brief we had prepared. May I suggest that Mr. Hall be commissioned to prepare such an opinion for the Judicial Council to be forwarded to us as soon as possible. I have enclosed an example of such an opinion which he may use if so desired, but anything less complete will be unacceptable.

“This matter is coming up before the House [841] of Delegates of the Washington State Medical Association in September. Changes in the State Grievance Committee setup will undoubtedly be made. For this reason may I have this opinion in my hands not later than September 1 and sooner if possible.

“To be perfectly frank, the local society feels it has had rather shabby treatment at the hands of the AMA; first in accepting this appeal before it had been referred to the State Board of Trustees; next in the extra-legal manner in which the society was treated before and at the Los Angeles hearing; but most of all in the unwarranted delay and the manner in which notification of the Judicial Council decision was finally made; and finally in the non-committal and uninformative opinion of the decision at the Chicago meeting. The very existence of our society is at stake. Your prompt action on this request will help greatly in re-establishing our con-

(Testimony of Miles H. Robinson.)

fidence in the AMA and dispel a definite feeling that the local society is being made the goat in this situation to save the face of higher organizational groups. [842]

“Your most earnest and sincere co-operation is solicited.

“Yours very truly,

“MORTON W. TOMPKINS, M.D.”

Q. Dr. Robinson, who at the time of the writing of this letter was President of the Walla Walla Valley Medical Society, if you recall?

A. Dr. Keyes was President.

Q. Dr. Robinson, had you instigated—

A. Oh, I beg your pardon, I think perhaps I made a mistake there. Dr. Page was President in 1950 and Dr. Tompkins was President in '51, that is right, and Dr. Keyes in '52. Well, I was right.

Q. Had you, Dr. Robinson, instigated press notices in the local press concerning the opinion?

A. No, indeed.

Q. Had you, as a matter of fact, instigated an article in Medical Economics relative to this matter?

A. I had nothing—they wrote me and asked me to tell them whatever I knew about it.

Q. That is, Medical Economics wrote you and asked you? A. Yes.

Q. And what did you do?

A. Well, I gave them some information about it.

Q. The information they asked for? [843]

A. Yes. [844]

(Testimony of Miles H. Robinson.)

I refer now to the depositions taken in this case on July 14, 1955, of Edwin J. Holman and George F. Lull. These were published yesterday.

The Court: All right.

Mr. Sembower: And I refer to page 24 in the deposition. I find here the following questions and answers relating—well, I will let them speak for themselves. The questions were propounded by the attorney, Mr. Schwartz, and the answers are those of Mr. Holman, who is on the legal staff of the American Medical Association. [850]

The Court: I have the original, I believe, of the deposition here.

Mr. Sembower: Yes.

The Court: And we had a problem similar to this in a protracted case which I had recently in Alaska where we had numerous depositions, and to keep the continuity counsel from both sides read excerpts from them and we had occasions when the same depositions were read from several times. In order to avoid duplication, if there is no objection, I will do that here; I will mark with a pencil the beginning and end of each excerpt as it is read. You find after you go over these depositions, after awhile, unless you check back with the reporter to find out what you have read, it is a difficult matter.

Mr. Sembower: I think that an excellent procedure to follow.

The Court: Is there any objection?

Mr. Kimball: No.

The Court: Of course, if you introduce a part

(Testimony of Miles H. Robinson.)

of it, counsel on the other side has the right to introduce the whole of the deposition or any part that pertains or connects up with the part read, at any rate.

Mr. Sembower: I think that is excellent.

I really should begin on page 23, the very last line: [851]

“Q. Did you make a search for a letter dated April 9, 1952, from one Pratt to the American Medical Association, addressed To Whom It May Concern, and reply? A. Yes.

“Q. Were you able to find them?

“A. I found a letter dated April 9, 1952, Pratt to American Medical Association, in another batch of material which I am unable to identify, except that it was in a folder marked Robinson. I find no reply.

“Q. Did you bring that letter with you?

“A. I did. This is the——

“Q. That is the letter?

“A. This is that material that was in the folder.”

That is read in connection with the letter read yesterday from Dr. Pratt to the American Medical Association.

The Court: What number is that letter? Do you have it there?

Mr. McNichols: I am attempting to find it, your Honor. [852]

The Court: What is the number?

Mr. Sembower: We are just for some reason——

Mr. Rosling: No. 198.

(Testimony of Miles H. Robinson.)

Mr. Sembower: 198.

The Court: 198.

Mr. Sembower: That is Exhibit 198.

The Court: That was the communication of Dr. Pratt in connection with the rehearing, wasn't it, or asking for rehearing?

Mr. Sembower: That is correct, yes.

The Court: Yes, I remember it. And whose is this you have just read?

Mr. Sembower: This is the deposition given by the legal officer of the AMA, showing that that letter was found in the records of the AMA.

The Court: Yes. There are two witnesses in this same deposition. It is Holman you read from?

Mr. Sembower: Holman is who I read from.

The Court: All right.

Mr. Sembower: Now, in the same deposition I refer to pages 111 to 114 in the deposition of Lull.

The Court: All right.

Mr. Sembower: That is the George F. Lull who is the General Manager and Executive Secretary of the American Medical Association. The questioner is Mr. Schwartz again [853] and this portion of the deposition relates to the minutes of the Judicial Council rehearing and I read them at this time to place in the record of the proceedings of that hearing as they appeared in the minutes of the Judicial Council of the American Medical Association.

Mr. Schwartz:

“Q. And ask if those minutes do not include matters pertaining to Dr. Robinson?

(Testimony of Miles H. Robinson.)

“A. They do.

“Q. Will you mark off the parts that pertain to him for the purpose of my reading them into the record?

“A. You want the people that were in attendance?

“Q. You can testify to that. Who were present at that meeting?

“A. Dr. Cunniffe, the Chairman; Dr. Homer Pearson, Dr. Walter F. Donaldson, Dr. J. B. Lukins and Dr. Louis A. Buie, all members of the Council. Dr. J. W. Holloway, Jr., and Mr. George E. Hall, his assistant. Also present were certain other individuals from the State of Washington. Do you want me to read them?

“Q. No, that is all right. I will read the [854] portions now that you have marked off. I will retract what I said there. I would like you to state the other persons present.

“A. Dr. R. A. Benson, Dr. Raymond L. Sech, Dr. M. Shelby Jared, Ralph W. Neill, Morton W. Tompkins, Mr. Neil Winikoff, Mr. J. W. Greger.

“Q. The part that you have marked off reads as follows:

“‘Re hearing of appeal of Dr. Miles H. Robinson, Walla Walla, Washington. The Chairman announced that in the rehearing of the appeal of Dr. Miles H. Robinson, Walla Walla, Washington, from the decision of the Walla Walla Valley Medical Society, expelling him from membership, the Council would insist that representatives of the parties

(Testimony of Miles H. Robinson.)

concerned confine themselves entirely to questions of law and procedure.

“ ‘Dr. Morton W. Tompkins presented the brief of the Walla Walla Valley Medical Society and accompanying exhibits, commented on the points set forth in [855] the brief, and answered questions from the Chairman, other members of the Council and Mr. Holloway. The Chairman asked if anyone present knew whether or not Dr. Robinson would be present at this hearing. Dr. Tompkins said he had seen Dr. Robinson on Thursday before leaving for Chicago, but Dr. Robinson did not have reservations on the plane nor did he show any sign of coming. Dr. Benson from Washington State Medical Association emphasized several points presented by Dr. Tompkins in reply to questions by the Chairman and others.

“ ‘The Chairman stated that the Judicial Council of the American Medical Association is obliged to protect the State Association, and to protect the membership in a component society. When it protects the member, it protects the society. When a member is guaranteed something in the Constitution and Bylaws, the guarantee should be lived up to, and the controversy thereunder [856] comes within the jurisdiction of the Judicial Council, and the question is, was this case tried in the proper way. After some further questions by the Chairman and members of the Council, all the representatives of the Washington State Medical Association and the Walla Walla Medical Society left the meeting.’

(Testimony of Miles H. Robinson.)

“Dr. Lull, there seems to be another——

“A. I am sorry. I haven’t seen it for several years.

“Yes. (Marking document.)”

I think that is all. On pages 3 and 4 there is another item:

“Q. The additional portion that you have just checked as pertaining to Dr. Miles H. Robinson reads as follows:

“ ‘Re hearing of appeal of Dr. Miles H. Robinson, Walla Walla, Washington. The Council continued to discuss the decision to be made in the Robinson appeal, each member offering suggestions as to how it should be written, not only to show that the [857] opinion of the Council is that the procedure followed by the County and State Societies was incorrect, and the previous decision of the Judicial Council is sustained, but also to indicate that evidence presented leads the Council to believe that the appellant is guilty; that the Council regrets that its duties as defined in the Constitution and Bylaws do not permit it to examine the case on the basis of fact.’ ”

The Court: That, I presume, might be regarded as medical-legal obiter dictum.

Mr. Sembower: Apparently so.

Q. Dr. Robinson, do you know who the Dr. Raymond L. Sech is who is mentioned among the persons present from Washington at the hearing?

A. Yes.

Q. Who is he?

(Testimony of Miles H. Robinson.)

A. At that time, and perhaps now, he was a trustee of the state medical association and former president of the state medical association and, I believe, a former delegate from the state medical association to the AMA.

Q. Do you know who Dr. M. Shelby Jared is who is mentioned [858] among those present from Washington? A. Yes.

Q. And who is he?

A. Dr. Jared is President of the Washington State Medical Bureau, also known as the Washington Physicians Service Corporation.

Q. Do you know who Mr. Neil Winikoff is whose name appears among those present from Washington?

A. Well, at that time Mr. Neil Winikoff was Secretary of the King County Medical Society in Seattle.

Mr. Rosling: Mr. Sembower, is it proper for me at this time to suggest to Dr. Robinson that I think he has the association of Dr. M. Shelby Jared confused? He was not President of the Washington Physicians Service, never has been. He was President of the King County Medical Service Corporation. Do you recall that, Doctor?

A. Well, when we took the deposition of Jared over there in Seattle in October, the deposition will show, but I understood that he was President of the State Medical Bureau, which had offices in the—well, which shared a common waiting room with the State Medical Association.

(Testimony of Miles H. Robinson.)

The Court: Go ahead.

Mr. Rosling: We will have to let it go, then, until further testimony.

Mr. Sembower: Yes, we will check the deposition and [859] bring the point out later, but we will proceed.

Q. Dr. Robinson, do you know who Mr. J. W. Greger is who appears among the Washington persons present at the hearing? A. Yes.

Q. Who is he?

A. He is Executive Secretary of the Medical Bureau in Chehalis, Washington.

Q. Dr. Robinson, after you received the opinion of the Judicial Council on the rehearing, did you do anything with respect to it?

A. (No response.)

Q. Let me ask you—ask this question: Did you communicate with the Judicial Council in any way?

A. Yes, I wrote them immediately that very day.

Q. And what was the substance of your statement to them? A. I pointed out to them—

Mr. Kimball: Is that letter introduced?

The Court: The letter would be the best evidence if any objection is made.

Mr. Sembower: Yes. Your Honor, we have found one or two letters that inadvertently were not placed on the list of exhibits and this is one of them. We thought there might not be objection. Since there is, we will offer the letter and see if counsel objects. I think that counsel has [860] been in possession of that letter, is that not correct?

(Testimony of Miles H. Robinson.)

Mr. Kimball: What is the date?

Mr. Sembower: 7-18-52, Robinson to Judicial Council. It is not on the list of exhibits.

Mr. Kimball: Isn't that Exhibit 39 in your Lull deposition?

Mr. Sembower: You mean——

Mr. Kimball: Attached to your Lull deposition, isn't that Plaintiff's Exhibit 39?

Mr. Sembower: Do you have it there?

Mr. Kimball: I'm sorry, I don't.

Mr. Sembower: What Lull deposition do you refer to, Mr. Kimball? The one I have been reading from?

Mr. Kimball: Yes.

Mr. Sembower: May I show this——

The Court: I think I remarked in the pretrial conference, and this will apply to both sides, of course, that in a case where so many documents have been presented here, it is almost inevitable that occasionally one would be overlooked inadvertently, and it is merely a question of good faith, whether there was good faith disclosure, and so far as I am concerned, I would have no objection.

Mr. Kimball: We are not objecting, either, your Honor.

The Court: And that will apply to both sides, if [861] you have overlooked something, an exhibit here and there, why, I wouldn't bar them on that account.

Mr. Kimball: We have no objection to their introducing this. It should be assigned a number.

(Testimony of Miles H. Robinson.)

The Court: We will mark that as the next number, Mr. Granger.

The Clerk: It will be Plaintiff's Exhibit 505.

The Court: 505. It will be admitted, then. [862]

* * *

Q. Dr. Robinson, did you file a charge against Dr. Ralph W. Stevens in November, 1952?

A. Yes.

Q. With whom did you file that charge?

A. With the Walla Walla Society.

Q. What was the substance of the charge?

Mr. Kimball: Was that a written document, Mr. Sembower?

Mr. Sembower: That I do not know whether it was or not.

Mr. Kimball: Maybe the witness can answer that. Would you inquire of him?

Mr. Sembower: I will withdraw the question.

The Court: I think you can bring out the fact that he did make the charges without going into the contents or what they were. If they are written, of course, the writing would be the best evidence as to the contents.

Mr. Sembower: Yes.

The Court: But I think he has already answered that he did make charges. When was that date, I didn't get that?

Mr. Sembower: That was in November.

The Court: The approximate date? [864]

Q. (By Mr. Sembower): Do you remember the exact time, Dr. Robinson?

(Testimony of Miles H. Robinson.)

A. Well, it was some time in November of 1952.

The Court: That is sufficient for my purposes.

Q. (By Mr. Sembower): What did the charge involve, Dr. Robinson?

A. Well, it involved the dispensing of glasses, contrary to the ethics of the AMA.

Q. Was this the matter which you pointed out to Dr. Stevens when you had the street conversation with him and the Edwards matter was first raised by him? A. Yes.

Q. What happened after you filed these charges?

A. The Walla Walla Society wrote me a letter stating that they had contacted Dr. Stevens and arranged for him to correct the irregularities concerned.

Mr. Kimball: If the Court please, could the letter be introduced?

The Court: Yes, if it is a letter, the letter would be the best evidence.

Mr. Sembower: I have Defendants' Exhibit 436 for identification and ask that it be admitted.

Mr. Kimball: I have no objection. I wondered if it wouldn't be orderly, though, to put the complaint in?

Mr. Sembower: Your Honor, there are many aspects to [865] this matter. We desire at this time only to raise the matter in connection with the conversation on the street in the Edwards matter.

The Court: Very well.

Mr. Rosling: If your Honor please, then I am going to object to the introduction of that because

(Testimony of Miles H. Robinson.)

I don't think it is pertinent. I think if he goes into the Stevens matter at all, I think the entire Stevens matter should come in, not come in piecemeal.

The Court: I think if you wanted to let it in, there should have been an objection made as to what the charges involved. He was permitted to testify without objection that they involved the matter of selling eyeglasses, and the best evidence would have been his written charges, of course.

Mr. Rosling: May I see the letter?

Mr. Sembower: Your Honor, our serious concern is that we could get off on this bypath of the Stevens matter and it *would us* about three days to try that matter, and we only wish to bring it in in this limited reference.

Mr. Kimball: Your Honor, in that regard, I can't follow the argument very well, because the letter is dated in 1952, two and a half years after the conversation with Dr. Stevens, and if they are not going to bring it all in, I think they ought to leave it all out. [866]

The Court: Of course, it is a question of when it is brought in, because I don't think there could be any question that if counsel uses this letter, the writing on which it is based could be brought out on cross-examination, ask them to produce the letter on cross-examination. I think they can get it in, anyway.

Mr. Sembower: We are perfectly agreeable if that is done and we are prepared to go forward with it, but we feel it is a digression. If the oppo-

(Testimony of Miles H. Robinson.)

sition wishes to bring it out on cross-examination, we are prepared to face it at that time and to proceed with it.

The Court: Well, this is the defendants' exhibit, it will be admitted. That is No. 436, was it not?

The Clerk: 436; yes, sir. [867]

* * *

Your Honor, we have at this time various excerpts from the minutes of the Board of Trustees and Executive Committee of the State Medical Association. The minute books have been supplied by Mr. Rosling and they arrived yesterday, and we have the rule to read only from exhibits which have been admitted, so that I suppose the thing I should do is ask that these be admitted as exhibits in the case, and I suppose there is no objection from Mr. Rosling.

Mr. Rosling: Well, I only have a practical side of it, your Honor. The State Medical, of course, has constant use of these minutes, some of them are current, and I wouldn't like to have them introduced if it is possible to avoid it, and my suggestion is that they be retained here just as long as counsel wants them and just let him read from the minutes—there won't be any objection, I don't think, from anyone—and in that way he can get into [868] evidence what he wants, but the books will be free.

Mr. Sembower: That is entirely agreeable.

The Court: Only a small part of them would be used here, I presume.

(Testimony of Miles H. Robinson.)

Mr. Sembower: That is correct, and we have marked passages.

The Court: I would suggest you read them into the record or have photostatic copies made of the portions you wish to put in here.

Mr. Rosling: Of course, if they went into the record, I don't see any reason for a photostat.

The Court: If there is no objection to that method, I have no objection.

Mr. Sembower: That is agreeable with us. I merely wanted to perform the proper procedure there.

Referring to the minutes of the Executive Committee for March 17, 1951—

The Court: This is the Executive Committee of the State Medical Association?

Mr. Sembower: Of the State Medical Association—we find a minute in this proceeding entitled "Grievance Committee Report":

"Dr. Berge made a report of the Grievance Committee proceedings.

"There was brought to the attention of [869] the Executive Committee a letter of March 15, 1951, from Mrs. J. Lorene Russell and her husband, Emergy S. Russell, of Bremerton, Washington, addressed to President Partlow, protesting the findings of the Grievance Committee in their complaint against Dr. K. P. Jackson of Bremerton. (Letters on file in Central Office.)

"Doctor Berge reviewed the hearing. He indicated that in the opinion of the Grievance Committee Doctor Jackson had done nothing harmful

(Testimony of Miles H. Robinson.)

except that he did not word his diagnosis correctly; that the Grievance Committee could consider only the charges made by Mrs. Russell and could not consider background information (Medical Defense Committee matters, etc.) previously received. Mr. Rosling indicated that was correct and that Mrs. Russell had already had her day in court.

“Doctor Benson felt it would serve a very useful function and purpose if the Grievance Committee would take it upon itself to point out to doctors against whom a complaint has been made, when it is [870] justified, where they have been careless in writing reports re patients. Mr. Rosling indicated after the Grievance Committee makes its findings in a particular case it can show where the doctor’s deportment and writing of reports, diagnosis, etc., were in error. He also said he felt the Grievance Committee, in its findings and decisions, is final in itself; that reports from Doctor Berge should be informative rather than requiring action; that the Committee may decide to refer some cases elsewhere, but that he didn’t think every action of the Committee is subject to review or revision. Doctor Corbett stated the Executive Committee has jurisdiction in the final analysis over all committees; that in answering Mrs. Russell’s letter he thought the reply should state the Executive Committee had reviewed the case and approved the findings of the Grievance Committee. Doctor Benson stated if any disciplinary action is involved the Executive Committee (or the Board of Trustees) must approve, and Mr. Rosling agreed. [871]

(Testimony of Miles H. Robinson.)

“It was moved, seconded and carried: that the Executive Committee approve the action of the Grievance Committee re Mrs. J. Lorene Russell.

“Doctor Berge also reported on two other cases, Victor J. Marion, Bellingham, vs. Sidney J. Hawley, M.D., Seattle, and Joseph D. Kelleher, Seattle, vs. Dr. E. A. Reiswig, Seattle, which were considered March 10 and where the Grievance Committee found for the defendants.

“It was moved, seconded and carried: That the Executive Committee accept the report of the Chairman of the Grievance Committee re Marion vs. Hawley and Kelleher vs. Reiswig.

“Doctor Berge then asked for advice re the matter of Cowlitz County Medical Society vs. Dr. Fred C. Parke. He reviewed the case; said the Grievance Committee had set it for hearing in Longview, April 7, but that Mr. Rosling felt this was the wrong action; that the Society had not made a complaint or asked for a hearing; and he read the last paragraph of the letter of Dr. J. A. Nelson, President, Cowlitz County Medical Society, [872] dated November 24, 1950, stating as follows:

““Our medical society would like an opinion from the committee of your organization as to what we should do from here. Are we justified in suspending him from the hospital staffs, or from the medical society, or what other discipline activities would be in order? * * *”

“After discussion it was moved, seconded and

(Testimony of Miles H. Robinson.)

carried: That the letter of November 24, 1950, addressed to the Executive Director, W.S.M.A. from Dr. J. A. Nelson, President, Cowitz County Medical Society, Longview re Dr. Fred C. Parke be referred to Legal Counsel for reply.

“Doctor Berge said he understood the Grievance Committee was in the position of an appellate court with direct jurisdiction; that it may review appeals from county medical societies, made either by the society, one of the doctors in the society or from a layman who may feel he has not had justice at the hands of the county society. Mr. Rosling indicated written complaints may come direct to the state Grievance [873] Committee, and that such complaints will probably be referred to the local grievance committee concerned; and the State Committee has the power to review findings of a local committee.

“Doctor Corbett said he didn’t think the Grievance Committee would fulfill its intended purpose unless it attempted to do preventive work as well. Doctor Berge asked whether it was within the province of the Grievance Committee to initiate as well as answer a complaint, and Mr. Rosling said he considered that the Committee did have the power according to Chapter VIII, Section 16, of the by-laws of W.S.M.A.

“In regard to the public relations and publicity aspects of the decisions of the Grievance Committee as brought up by Mr. Barnes, Doctor Berge stated

(Testimony of Miles H. Robinson.)

he felt 95 per cent of the cases coming up before the Grievance Committee would be without justification. In the 5 per cent where there is justification, should anything be done about the findings outside of informing the parties involved; should anything be [874] published in the papers about decisions rendered where the doctor concerned is disciplined? Doctor Corbett stated he thought these matters would have to be decided by the Grievance Committee in each case.”

And that ends the minute relating to the Grievance Committee.

Referring to the minutes of the Board of Trustees of May 6, 1951:

“Grievance Committee Report:

“Doctor Berge reported that the Grievance Committee had heard two cases on April 22, 1951, in Walla Walla; the case of Thomas R. Brooks vs. Miles H. Robinson, M.D., and Miles H. Robinson, M.D., vs. Walla Walla Valley Medical Society; and discussed the findings.

“Doctor Berge moved that ‘The Board of Trustees endorse and ratify the decisions of the Grievance Committee in the foregoing actions.’ Motion was seconded.

“There followed a period of discussion wherein Doctor Zeck queried whether the Washington State Medical Association could pass on a violation of the Code of Ethics of [875] the American Medical Association. Doctor Adams asked whether the Board could rule on what constituted unprofes-

(Testimony of Miles H. Robinson.)

sional conduct and suggested that the term 'unprofessional conduct' be deleted from the decisions. Doctor Benson indicated Doctor Robinson would lose staff privileges and this could be construed as restraint of trade or discrimination. Doctor Berge replied stating that the Grievance Committee only recommends what action should be taken by the Society. He continued the term 'unprofessional conduct' is applied to Doctor Robinson because he failed to appear at the hearing after due notification without reasonable excuse. This is a direct violation of Article 3 of the Rules and Regulations of the Washington State Grievance Committee.

"It was pointed out that Doctor Robinson was being deprived of certain rights as a result of his sentence and he could accordingly sue the Association or the Society. Legal Counsel stated that a Society has the privilege of either accepting or rejecting applicants for admission to that [876] Society. The regulations of the Grievance Committee are binding upon the members, and should the Grievance Committee make a recommendation involving a suspension or reprimand it must be presented to the Board of Trustees for its approval. In the matter of Robinson vs. the Society, approval of the Board is not required, Counsel continued, but in the matter of Brooks vs. Robinson a recommendation for suspension is made and it must be approved by the Board. Doctor Freund said that if Mr. Brooks took the matter to civil court using the State Grievance Committee's decision as evi-

(Testimony of Miles H. Robinson.)

dence then Doctor Robinson might lose his license to practice medicine. Counsel agreed it could be admissible evidence, but concluded that if a Grievance Committee is going to function and warrant the support of the public 'the thing has got to have some teeth in it.'

"The question was put to Legal Counsel whether the Association could be held liable for decisions based upon its Constitution and Bylaws; Counsel replied in the negative stating 'when a person becomes a member of [877] this Association he agrees to be bound by the Constitution and Bylaws of the Association.' He said when the amendment to the Bylaws was passed it provided that the Rules and Regulations of the Grievance Committee should be published, so Doctor Robinson had ten days in which to withdraw his membership from the Society. Doctor Gaiser wanted to know if the State Rules and Regulations had been published prior to the inception of this grievance. Counsel replied that the Rules and Regulations were published and this complaint was filed after the inception of the Grievance Committee.

"Doctor Spickard moved the deletion of the sentence in Paragraph 5, page 3, Brooks vs. Robinson, 'We also feel that there is reason to believe that he violated the common law.' Motion was seconded and carried.

"It was moved that the last sentence of Paragraph 5, page 3, Brooks vs. Robinson be amended to read: 'He has violated the principles of medical

(Testimony of Miles H. Robinson.)

ethics of the American Medical Association which have been adopted [878] as the Code of Ethics of the Washington State Medical Association.' Motion was seconded and carried.

"The original motion that the decisions of the Grievance Committee be approved was carried.

"Doctor Gaiser stated that a uniform set of Rules and Regulations for Grievance Committees, for the use of County Societies, was under preparation. Procedure to be followed will also be outlined for the information and guidance of County Societies. The Board of Trustees should approve them. In the meantime Doctor Gaiser felt that County Societies not having Rules and Regulation should be inoperative until the proposed Regulations had been adopted by those Societies.

"Doctor Partlow commented on the matter of Bureau managers also serving as Executive Secretaries of the local County Medical Society. From certain aspects this is not a desirable situation in his opinion.

"Mr. Neill brought up the matter of a member of the Association staff being in any [879] way involved in the work of the Grievance Committee. He thought it best that a member of his staff be used, thus keeping the matter under consideration 'in the family.' If outside services were to be obtained there would be some chance of leakage. He commented on the fact that the Secretary of the Grievance Committee of the Walla Walla Valley

(Testimony of Miles H. Robinson.)

Medical Society is the Executive Secretary of that Society. Doctor Gaiser stated that this was understandable because they wished to preserve the secrecy of that Committee. Doctor Berge referred to page 4, Paragraph 6 of the Robinson vs. Walla Walla matter in which a recommendation is made that the matter of maintaining the Grievance Committee as a secret Committee be reviewed by that Society. Concerning Mr. Neill's remarks, Doctor Berge stated that during the hearings a court reporter should be present to take verbatim testimony. As Chairman of the Grievance Committee his work required a great deal of secretarial assistance, and he added Mrs. Lawrence of the W. S. M. A. staff had been a wonderful help. [880] It is necessary that she be fully informed of what is going on and have a locked file so complete secrecy may be obtained. 'I would much prefer to work with Mrs. Lawrence than to have outside assistance.'

"Doctor Bryant was of the opinion the doctor concerned should be informed of the decision first. Doctor Gaiser discussed the matter of requesting County Societies which had no Rules and Regulations for their Grievance Committee setup, to cease functioning. Legal Counsel took issue on this subject for, in his opinion, the autonomy of the Society was being questioned in that this request could be interpreted as a request to disband a duly constituted committee. Doctor Gaiser then made the following motion 'that all component societies be advised due to the experience of the State Griev-

(Testimony of Miles H. Robinson.)

ance Committee it has been found that some of the local Grievance Committees have not properly prepared Rules and Regulations and the State Grievance Committee has prepared a form and it is recommended that the procedure set up by [881] the State Grievance Committee be adopted on a local level.' Motion was seconded and carried.

"It was moved, seconded and carried that the report of the Grievance Committee be approved."

And that concludes the entry with respect to the grievance committee at this meeting.

Referring to minutes of the Executive Committee held Wednesday, January 16, 1952, at 6:30 p.m., at the Rainier Club, Seattle, we find a subheading:

"Rules and Regulations of Grievance Committee:

"In view of the pending decision of the A.M.A. Judicial Council it was decided to withhold publication of the rules and regulations of the State Grievance Committee."

And that concludes the entry with respect to the grievance committee at this meeting.

The Court: What is the date of that last minute? Did you give me that?

Mr. Sembower: January 16, 1952.

Referring now to minutes of the Executive Committee meeting held March 12, 1952, at 6 p.m. in the Rainier Club, Seattle we find a subheading entitled:

"Membership Status of Dr. Miles H. [882] Robinson:

(Testimony of Miles H. Robinson.)

“Discussion was had on Legal Counsel’s letter of February 14th to Doctor Robinson in reply to his query concerning his membership status in the Association. Mr. Rosling said he replied to Doctor Robinson’s query as a ‘legal question and it was signed by me as an individual.’

“In letter dated February 18th the President of the Walla Walla Valley County Medical Society said in part “We are not at this time taking any action * * * until the Society has received certain information from the Judicial Council of the A.M.A. * * * and until a decision has been reached as to whether or not that decision will be appealed to the Board of Trustees of the A.M.A.’

“Pending receipt of the Association’s requested information from the Judicial Council, the matter was set over. Doctor Benson pointed out the necessity of instructions to the State Grievance Committee by the Board of Trustees at its next meeting.”

And that concludes the entry.

Referring to minutes of Executive [883] Committee meeting held April 9, 1952, at 6:30 p.m., Rainier Club, Seattle, there appears under Old Business, Subparagraph (a):

“Judicial Council Decision re membership of Dr. Miles H. Robinson:

“A communication relative to the A.M.A. Judicial Council’s decision on Doctor Robinson’s appeal from the action of the Walla Walla Valley Medical Society was read. Lengthy discussion followed on

(Testimony of Miles H. Robinson.)

the case and on the course of action the State Grievance Committee and the Walla Walla Valley Medical Society should take. Doctor Benson moved, it was seconded and carried that: Legal Counsel be instructed to prepare a critical analysis of the communication concerning the Judicial Council's decision for the President's signature; to be approved by the Board of Trustees and that the Walla Walla Valley Medical Society be informed this matter has been taken under advisement and will be submitted to the Board of Trustees for its consideration."

And that concludes the entry. [884]

Referring to the minutes of the Executive Committee meeting of the Washington State Medical Association, held July 30, 1952, at 6:30 p.m., at the Rainier Club, Seattle, under Old Business, Subparagraph (c), there appears the following entry:

"The Secretary outlined Legal Counsel's letter concerning the Robinson vs. Stevens, et al., matter in which the Association was served. It is an action for damages, he said, resulting from an alleged conspiracy to destroy the plaintiff's medical practice by wrongfully causing his expulsion from the local society. The Executive Secretary stated that Walla Walla Valley Medical Society had readmitted Doctor Robinson to the Society; that the Society had written the A.M.A. to close the case. Counsel's letter and the Executive Secretary's comments were offered for information. It was then moved, seconded and carried that: They be received.

"(d) It was moved, seconded and carried that:

(Testimony of Miles H. Robinson.)

The opinion of the Judicial Council on the rehearing of the appeal of Doctor Miles H. Robinson, dated June 9, 1952, be [885] received. Lengthy discussion followed on the necessity of revising the Rules and Regulations of the State Grievance Committee. Doctor Benson moved, it was seconded and carried that: The decision of the Judicial Council be referred back to the State Grievance Committee and that it, with aid of Legal Counsel, be directed to revise its rules and regulations to conform to the concepts of the A.M.A., and that the following principles be incorporated into such a revision: (1) That local County Medical Society autonomy be strictly observed; (2) That the State Grievance Committee be eliminated as a court of original jurisdiction and (3) That the Board of Trustees be an appellant body to the State Grievance Committee. That the rules and regulations so revised be presented to the House of Delegates at its 1952 session for its consideration."

And that concludes the entry.

Referring to the minutes of the Executive Committee of the Board of Trustees of the Washington State Medical Association held October 15, 1952, at 6:30 p.m., [886] Rainier Club, Seattle, there appears under the "Grievance Committee" the following entry:

"The Executive Committee reviewed and discussed the recommendations of the Committee on Reports to the House of Delegates with regard to Grievance Committees.

(Testimony of Miles H. Robinson.)

“Doctor Benson moved, it was seconded, and carried: That the Chairman of the Grievance Committee, with the aid of Legal Counsel, be directed to revise rules and regulations of the State Grievance Committee for presentation to the Board of Trustees at its next meeting in order to thereby implement the recommendations of the Committee on Reports at the last meeting of the House of Delegates.”

And that concludes the entry.

Referring to the minutes of the Executive Committee of the Board of Trustees of the Washington State Medical Association held Novemembr 19, 1952, at 6:30 p.m. at the Olympic Hotel in Seattle, Washington, there appears the entry:

“Proposed Change in Bylaws of King County Medical Society:

“Mr. Rosling stated that it had been brought to his attention informally at the [887] meeting of the Board of Trustees of the Washington State Medical Association, October 26th, that one of the proposed changes which was approved at a previous meeting of this Board was a sentence Article III, Section 7, of the King County Bylaws reading as follows:

“‘However, the disciplinary action voted by the society shall remain in full force and effect during the pendency of such appeal or appeals.’

“However, when this proposed Bylaw was acted upon by the King County Medical Society, the above sentence was changed so that the disciplinary action

(Testimony of Miles H. Robinson.)

should not remain in full force and effect during the pendency of an appeal, which change is in violation of the State and A.M.A. Constitutions, and therefore, ineffective as a part of the Society's Bylaws.

“It was moved, seconded and carried; That the King County Medical Society be requested to submit a copy of the amendments adopted by their Society on October 6th, to the Washington State Medical Association.” [888]

And that concludes the entry.

I have a few citations from the minutes of the Board of Trustees of the Washington State Medical Association. The first entries were from the Executive Committee that I read a moment ago and the second were the Executive Committee of the Board of Trustees, so the chronology is not perfect between them.

The Court: The one of May the 6th, 1951, was the minutes of the Board of Trustees, wasn't it?

Mr. Rosling: That is correct.

The Court: The others were for the Executive Committee. All right, I have it straight.

Mr. Sembower: Yes.

I refer to the Executive Committee report to the Board of Trustees, dated January 7, 1952, which appears in the minutes of the Board of Trustees meeting held on January 27, 1952, at the Washington Athletic Club in Seattle, and in the Executive Committee report there appears Paragraph 19:

“Directed that the publication of the Rules and

(Testimony of Miles H. Robinson.)

regulations of the State Grievance Committee be withheld pending the decision of the Judicial Council of the A.M.A.”

Referring to minutes of the Board of Trustees, Washington State Medical Association, for May 11, 1952, at [889] the Washington Athletic Club in Seattle, there appears under the heading “Grievance Committee” the following entry:

“Dr. Berge spoke at length on the history and formation of Grievance Committees. He outlined in detail the Dr. Miles H. Robinson matter; Doctor Robinson’s appeal to the Judicial Council of the A.M.A., and the latter’s reversal of the decision of the State Association and County Society. Upon petition by the County Society a rehearing has been granted. The State Grievance Committee will be given an opportunity to present oral testimony at the rehearing scheduled for June 7, 1952, in Chicago. Lengthy discussion followed on the over-all Grievance Committee picture.

“Doctor Young moved, it was seconded and unanimously carried that: The Washington State Medical Association continue its Grievance Committee.

“It was then moved by Doctor Berge, seconded and unanimously carried that: A brief be prepared to be presented to the Judicial Council of the A.M.A., at the rehearing of the Robinson matter on June 7, [890] 1952, in Chicago.

“Dr. Benson will appear before the Judicial Council on behalf of the Association, and requested that Doctor Zech, A.M.A. Delegate, be present.

(Testimony of Miles H. Robinson.)

“Doctor Berge moved that: The Rules and Regulations of the State Grievance Committee be reviewed and made to conform with the concept of its appellate character.”

Referring now to the minutes of the Board of Trustees for October 26, 1952, in the Washington Athletic Club, Seattle, Washington, under the heading “Recommendations of the House of Delegates, Paragraph (a), Grievance Committee:”

“The Committee on Reports’ recommendations to the House of Delegates relative to the annual report of the Grievance Committee were referred to the Executive Committee at its October 15, 1952, meeting, when the following action was taken:

“‘It was moved, seconded and carried: That the Chairman of the Grievance Committee, with the aid of Legal Counsel, be directed to revise rules [891] and regulations of the State Grievance Committee for presentation to the Board of Trustees at its next meeting in order to thereby implement the recommendations of the Committee on Reports at the last meeting of the House of Delegates.’

“In accordance with the foregoing, the legal counsel presented his letter dated October 24th to the Board of Trustees in which he outlined three courses of procedure to implement the action of the House of Delegates:

“‘1. Repeal Section 3 of Chapter V granting the right of appeal to the Board of Trustees to a member of component society who has been disciplined by action of his society.

(Testimony of Miles H. Robinson.)

“ ‘2. Modify the rules and regulations of the Grievance Committee so as to permit the Grievance Committee to make final recommendations involving disciplinary action without first submitting its recommendations to the Board of Trustees for approval. This procedure will require [892] a redrafting of the rules, approval of the new rules by the Board of Trustees, followed by publication in Northwest Medicine.

“ ‘3. Remove from the jurisdiction of the Grievance Committee all matters relating to the ethical deportment of the members. This will involve a change in the Bylaws which can be done only by the House of Delegates.’

“ ‘Dr. Berge stated, ‘in addition to what Mr. Rosling has told you, I don’t know how familiar most of you are with rules and regulations of the Grievance Committee.’ Therefore, Doctor Berge quoted Section 7 under Rules and Regulations of the Grievance Committee of the W.S.M.A. as follows:

“ ‘7. The Committee will receive written complaints from any person whether or not he or she be a physician, a member of the Association, an employee of the Association, a patient of a physician or any other person, lay or professional, and will also review de novo (from the beginning) any controversy or matter [893] referred to it by the Grievance or Ethics Committee of any local component society.’

“ ‘That means this committee is in the position of an appellate court and any person in the state

(Testimony of Miles H. Robinson.)

can complain to us about any doctor and we will hear the case. It has been our practice up to now to leave the complaint in the hands of the Chairman to either turn back to local societies, and have the local society make its recommendations and if the aggrieved wishes to make an appeal to us we will hear it. People do not always feel they can obtain a fair hearing from the county committee. I think this Board should accept the second suggestion as it appears in Mr. Rosling's letter of the 24th of October. Do you want us to continue as we are doing now, i.e., referring cases back to local societies, or do you want us to hear appeals from local societies? Should people complain first to their local society and have us as an appellate court, only hearing appeals from local counties?' Doctor Berge referred to Chapter V, Section 3, [894] of the Constitution and Bylaws—Appeals in Disciplinary Proceedings. He also read Section 16c, Chapter VIII—Grievance Committee Duties. 'Do you want us to act as an ethics committee as well as a Grievance Committee? If so, then the Constitution and Bylaws will have to be revised. My feeling is that there must be an Ethics Committee. If you want a separate committee, then revise the Constitution and Bylaws.' He recommended that the rules and regulations of the Grievance Committee be modified so as to permit the Grievance Committee to make final recommendations involving disciplinary action without first submitting its recommendations to the

(Testimony of Miles H. Robinson.)

Board of Trustees for approval. 'This requires re-drafting of the rules. They will only have to be redrafted in Section 12, however, dropping one line, i.e., subject to the approval of the Board of Trustees. If you do that, you are putting a great deal of power in the hands of the Grievance Committee. It will be a very powerful committee. These men could make a great deal of trouble if they [895] are not careful, just and sincere in their findings. If you do that, I feel these men are taking a tremendous responsibility. The danger we run of being sued is great. We should protect the members of the Grievance Committee against such a suit by proper insurance.'

"Doctor Berge moved, it was seconded and carried: That Paragraph No. 2 of Mr. Rosling's letter, dated October 24, 1952, be accepted, and that the members of the Grievance Committee be adequately protected by insurance in case of a suit against them.

"Doctor Jared said he believed the power of the Grievance Committee is not too great. 'It has a direct appeal from the public, from the doctor, and from the county society. All it does is make recommendations to the county societies. It cannot deprive a doctor from membership in any county society. The Board of Trustees must review its findings. The doctor who is accused and whoever the local society suspends can appeal to the Board of Trustees of the State Association. I think that is the answer to it. I think [896] the Central Office of

(Testimony of Miles H. Robinson.)

the State Association should protect members of the Grievance Committee against suit by providing necessary insurance.'

"Mr. Rosling stated that it was his opinion if the members of the Grievance Committee act honestly, they would not be responsible in damages to the party whose case is being considered before them. 'Bear in mind, however, that an attempt to hold them might be made. The Robinson case is a splendid illustration. It is always possible for someone to say that a conspiracy has been formed in which the members of the State Grievance Committee are acting jointly with local groups to bring about his expulsion. I think the suggestion that they be protected by liability insurance is a very sound one.'

"Doctor Adams questioned whether the members of the county Grievance Committees should not also be covered inasmuch as they are in the same position as the State Committee.

"Doctor Kintner requested Doctor Berge [897] to determine where counties could obtain such liability coverage, and Doctor Berge said he would do so.

"After further discussion, Doctor Rew moved, it was seconded and carried: That revised recommendations regarding the formation of County Society Grievance Committees be forwarded to each County Society with the recommendation that the Constitution and Bylaws of the Society be changed to conform to that of the State Association and the

(Testimony of Miles H. Robinson.)

A.M.A. as it pertains directly to the formation of such a Committee.”

And that concludes the entry.

The Court: Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Mr. Sembower: Your Honor, in the reading of the minutes, there was reference to insurance. We literally stumbled on that in the continuity. We wanted to state that we are making no contention with reference to insurance and we are perfectly agreeable, if the Court wishes, to strike the references to insurance. The insurance provided goes after it and can have no bearing upon the incidents themselves.

The Court: There is a strict rule against [898] mentioning insurance in jury cases.

Mr. Sembower: Yes.

The Court: I don't know whether I have ever known it to arise in a case before the Court. I understood from your reading here that this proposed insurance was to cover the members of the State Grievance Committee as individuals and the members of the State Grievance Committee are not defendants in this case.

Mr. Sembower: Yes. We intended to present no implication.

Mr. Rosling: I don't ask it be stricken, I just ask counsel to accept my statement that insurance was not procured.

The Court: I see.

(Testimony of Miles H. Robinson.)

Mr. Sembower: Our sole purpose was to show the confusion here, not to have any reference to insurance, as such, at all.

The Court: Well, I will instruct myself to disregard all matters of insurance.

Mr. Sembower: All right.

Q. Dr. Robinson, did you keep your office open in Walla Walla during all this time, during the spring and during the late winter and spring of 1953? A. Yes.

Q. Until what date did you keep your office open here? [899]

A. Approximately June 1, 1953.

Q. And what did you do then?

A. We prepared to leave Walla Walla and move to Baltimore.

Q. You stated "we"; to whom do you refer?

A. Myself and my immediate family.

Q. And you moved then to Baltimore, Maryland?

A. Yes.

Q. Why did you close your office in Walla Walla, Dr. Robinson?

A. Well, my medical business was very poor and I could hardly make expenses. We felt completely ostracized in the community. There was a great deal of hostility on the part of the other doctors in the town, most of them, and I felt there was just no future for me as a doctor in Walla Walla, after having been expelled from the medical society. [900]

(Testimony of Miles H. Robinson.)

Mr. Sembower: Reading from Plaintiff's Exhibit 255, which is a photostatic copy of a letter from Miles H. Robinson, M.D., to Mr. John E. Davis, Executive Secretary, Walla Walla Valley Medical Society, dated January 9, 1953:

"Dear Mr. Davis:

"This will confirm our conversation this morning in which I pointed out to you that the 1953 'Emergency Call Sheet, an Activity of the Walla Walla Valley Medical Society,' fails to list my name in the proper alphabetical place. Since this Call Sheet covers the last half of the doctors in the Society, and since my name did not appear in the first Call Sheet, the result is that I have not been listed at all.

"It is scarcely necessary for me to remind you that these call sheets are publicly displayed in both hospitals [901] and probably elsewhere. These lists, therefore, constitute a display to all the nurses of this community, and through them to the public, designating the responsible doctors of this community who are to be called in an emergency."

And Exhibit 285 is the emergency call sheet of the period in question.

Q. I will ask you, Dr. Robinson, did you have the conversation with Mr. Davis referred to in your letter? A. Yes.

Q. Was it in person or by telephone?

A. It was in person.

Q. At his office? A. Yes.

(Testimony of Miles H. Robinson.)

Q. That was the office of the Walla Walla Valley Medical Bureau and also the society?

A. Yes, in the Drumheller Building.

Q. In substance, what did you say to him and what did he say to you on that occasion?

A. I told him that on every floor of every hospital these pink mimeographed sheets were posted showing what doctors were on emergency call on what days, and I told him that my name was not listed on those sheets and, just as I said in the letter, that that was quite [902] hurtful to me, especially after having been expelled from the society and having been kept out of the hospitals for a year or so, and that everyone would just naturally assume that I was still just out of things and not acceptable to the official society and not eligible for inclusion in an important list of this kind.

Well, he said that—he said, “Well”—Well, in the first place, I was going to mention his attitude, but I realize I have to say what he said.

He said, “Well, no doubt, that is because these lists are made up from the doctors who are on the bureau.” I told him that I had heard that excuse so often that I was extremely tired of it and reminded him again that I was a bona fide member of the society; that this list states that “This emergency care list is a function of the Walla Walla Society,” and I said, “I cannot understand why you do not use the list of the society members”; that I was not a member of the bureau, perfectly

(Testimony of Miles H. Robinson.)

true, but that that had absolutely nothing to do with the situation.

And he had no response that I can recall to that comment. He said then further, he said, "Well; I will tell the girls about it and we will get you on the next list." "Well," I said, "that doesn't help me now. These lists only come out every six months." And I can't [903] recall exactly what he said, whether he would try to amend the thing or whether he said that there were so many copies had gone out. I understood every drug store had them tacked up in their office or somewhere. But in any case, nothing was ever—I was never put on the list and nothing was ever done about it.

Q. Did you ever rejoin the bureau here, Dr. Robinson? A. No, I did not.

Q. Did you make any additional efforts to gain admission to the St. Mary's Hospital other than those which have been testified to up to this time?

A. I believe I wrote St. Mary's a last letter some time in there, the usual thing, asking if I couldn't get back in on the staff.

Mr. Sembower: I have Plaintiff's Exhibit 256 for identification and ask that it be admitted.

The Court: I didn't get the number.

Mr. Sembower: 256.

Q. Dr. Robinson——

The Court: I didn't get your decision on that.

Mr. Sembower: I'm sorry.

The Court: 256 has been offered and that is No.

(Testimony of Miles H. Robinson.)

2 with reservations being reserved; that is, the right to make objection has been reserved.

Mr. Smith: We will object to that, your Honor, in [904] that it refers to a number of conversations which we don't feel are admissible. We will admit the letter is authentic.

The Court: Well, it will be admitted as evidence of the writing of the letter and the demand made for information, and so on. It will not be taken as evidence of hearsay statements.

Mr. Sembower: Thank you. We merely wished it for the purpose of the letter having been written.

(Whereupon, the said letter was admitted as Plaintiff's Exhibit No. 256.)

Q. Dr. Robinson, when you moved to Baltimore, did you apply for admission to the medical society in Baltimore? A. Yes.

Q. What is the organizational setup, Dr. Robinson, as to the society there, if you recall?

A. It is in every respect the same as in Washington State; that is to say, in each county there is a local county medical society which is affiliated with the State Medical Society of Maryland, which in turn is affiliated with the AMA.

Q. And when did you make application, if you recall?

A. I believe it was—in fact, I remember it was December 30, 1953.

Q. Why did you apply for membership to the Baltimore Society, [905] Dr. Robinson?

(Testimony of Miles H. Robinson.)

A. The same reasons that I applied here in Walla Walla—you have to be a member of the society in order to have hospital privileges, and in order to have professional standing in the community, it is highly advisable to be a member of the society, and I would say, thirdly, that I think all doctors ought to be a member of their society to pursue the best interests of the profession and the public.

Q. How did you make application?

A. I wrote a letter to the secretary of the Baltimore County Medical Society.

Q. Did you get a response to that?

A. No, I did not.

Q. What did you do then?

A. I might say that in that letter I told them—

Mr. Rosling: If your Honor please, I think the letter would be the best evidence.

The Court: Yes, the letter would be the best evidence, if you have it.

Mr. Sembower: I have Plaintiff's Exhibit 262 for identification and ask that it be admitted.

The Court: It will be admitted. [906]

* * *

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit 261 and ask you if this is the letter to which you have just testified?

A. Yes.

Mr. Sembower: The exhibit reads:

“Dear Doctor Wheeler:

“I wish to apply for membership in the [909]

(Testimony of Miles H. Robinson.)

Baltimore County Medical Association, and have today written the Walla Walla Valley Medical Society, in Walla Walla, Washington, of which I am a member, and asked them to forward to you my credentials for the purpose of transferring my membership to the county medical society here.

“If there is anything further I should do, please advise.

“I would be much obliged if you would let me know where and when your Association meets.

“Sincerely yours,

“MILES H. ROBINSON, M.D.”

Q. Now, Dr. Robinson, did you receive a reply to that letter?

A. The next thing that happened was I got this carbon copy from Walla Walla, a carbon copy of their letter to the Baltimore County Medical Society, passing on my credentials. [910]

* * *

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit 263 and ask you if you have seen it before? A. Yes.

Q. And what is that exhibit?

A. Well, as I started to say, I waited a week and I hadn't heard from them so I telephoned Mr. Wheeler and he wrote [911] me that letter stating—or Dr. Wheller, I should say—stating that he had received word from the Walla Walla Society and had passed their letter on to the Board of Censors of the Baltimore County Medical Society.

(Testimony of Miles H. Robinson.)

Q. Dr. Robinson, when were you actually admitted to the Baltimore County Society, if you recall?

A. It was between four and five months, as nearly as I can recall, after I applied to them.

Q. I show you Plaintiff's Exhibit No. 508 and ask you if you have seen that before? A. Yes.

Q. And what is that letter, Dr. Robinson?

A. Notifying me that I have been admitted and the letter is dated April 23, 1954.

Mr. Sembower: For the record, this is a letter from Clarence E. McWilliams to "Dear Doctor Robinson"——

Mr. Kimball: The number of the exhibit, please?

Mr. Sembower: 508.

The Court: May I see the exhibit?

(Exhibit handed to Court.)

Mr. Tuttle: The number of the exhibit, please?

Mr. Sembower: 508.

Q. Now, Dr. Robinson, between the time of your application and the acceptance of your application and the conferring of membership, tell us what next happened. [912]

The Court: Pardon me, did I understand the witness to testify that this April 23rd, that was four or five months after your application?

A. Yes, that was. I was figuring from December the 30th, 1953, to some time in April, which would be——

Mr. Rosling: Three months and 23 days.

(Testimony of Miles H. Robinson.)

A. January, February, March—well, that is correct, it is not quite four months.

The Court: All right.

Q. (By Mr. Sembower): What did happen next during the interval of time between your application and the acceptance of it?

A. I waited a couple of weeks after this letter of January the 9th from the secretary saying my application had been passed on to the Board of Censors, who pass on new applicants, and then I became rather concerned because I knew that there is no waiting period for a transfer member. A new applicant anywhere in the country has to wait six months or so, but when you are already a member of a county medical society in some part of the United States, at least in Baltimore, there is no waiting period in getting your Baltimore County membership, because in both cases you are a member of the AMA.

So I went across the street one day and just—

Q. Across the street? [913]

A. From my medical office and introduced myself.

Q. Just for the record, Dr. Robinson, where was your medical office located there?

A. 28 Allegheny Avenue, Baltimore 4. And that community is also known as Towson. It is a suburb of Baltimore. And I introduced myself to Dr. Howell, who was an outstanding pedetrician who had his office there, and asked him about it. Well, then, the next thing that I remember—he had noth-

(Testimony of Miles H. Robinson.)

ing to say about it, didn't know anything about it—the next thing that I remember is he called me up and said, "There is going"—

Mr. Kimball: If the Court please, I object to any statements.

The Court: Yes, that is hearsay.

Q. (By Mr. Sembower): Will you state what did happen after you introduced yourself to Dr. Howell?

A. Oh, well, I asked him about my application. Then I received a telephone call from him on about February the 17th.

Q. Well, now, did Dr. Howell take you then to a meeting of the society?

A. Yes, I then went with Dr. Howell shortly after that 'phone call at his invitation to a meeting of the Baltimore County Medical Society, held in the Penn Hotel a few blocks away at a luncheon meeting, which was their [914] regular February meeting.

Q. Dr. Robinson, prior to this time, were you known around Baltimore?

A. I don't know exactly what you mean.

Q. Well, were you known by the doctors who lived in the community there in Baltimore?

A. Well, I don't believe I was really—it was not where I was born or raised.

Q. Well, then, what occurred at the meeting, if you recall?

A. Yes. I met quite a few of the doctors there and we sat down to a luncheon and—

(Testimony of Miles H. Robinson.)

Q. And then what occurred?

A. The first thing, one of the first things that occurred, and the thing that I remember above all else, was that a motion was made that the application blanks of all new members coming in the Baltimore County Medical Society should henceforth state whether the applicant had or had not been convicted of a violation of medical ethics. The motion was promptly seconded and passed.

Q. If you know, was that provision the only change between the applications for membership as they existed before that and the applications pursuant to the motion? A. That is correct.

Q. Dr. Robinson, you testified that you opened an office in Baltimore. How long did you keep your office open? [915]

The Court: What is the evidentiary value of this testimony, Mr. Sembower?

Mr. Sembower: Your Honor, we propose to introduce testimony as we go along——

The Court: Are you going to connect it up with these defendants?

Mr. Sembower: That is correct.

The Court: All right.

Q. (By Mr. Sembower): How long did you keep your office open in Baltimore?

A. Until approximately August or September of 1955.

Q. Did you seek hospital privileges in Baltimore? A. Yes.

Q. Were you successful in obtaining them?

(Testimony of Miles H. Robinson.)

A. No.

Q. Did you testify when you closed your office, for the record?

A. Approximately August or September of 1955.

Q. And why did you close your office?

A. No business, or practically none. [915-A]

* * *

The Court: And I assume now that counsel understood what I had in mind, what my proposal is, to proceed with the issue of liability on both sides before proceeding with the issue of liability.

Is that clear?

Mr. Sembower: Yes.

Mr. Kimball: Yes. [922]

* * *

MILES H. ROBINSON

plaintiff herein, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Tuttle:

Q. Dr. Robinson, I am quoting from Paragraph XXIV of your complaint in this action, in which you have alleged:

“That after the plaintiff’s criticisms of the secret grievance committee had gained the support of almost half of the membership of the society, as shown by an official test vote on November 20, 1950, the fear and enmity of the defendants were aroused

(Testimony of Miles H. Robinson.)

and they did make use of the aforesaid secret grievance committee and by other means the defendants to a degree combined to conspiracy for the purpose of injuring the plaintiff and the plaintiff's reputation as a doctor and destroying his medical practice by wilfully causing his expulsion from said society."

Do I understand from that allegation, [923] Doctor, that that is the date at which you allege this conspiracy was entered into on the part of the defendants, November the 20th, 1950?

Mr. McNichols: Your Honor, I don't think that is a proper question as to the witness' version of when this thing commenced exactly.

Mr. Tuttle: I am going to ask him when——

The Court: Well, I think the question is proper as to when he thinks it commenced. I don't think that too much should be made of the statement in the pleadings because usually they are the lawyer's statement rather than the litigant's. But I think he may answer, if he can, the question of when he considers the conspiracy began.

Do you understand the question, Doctor?

A. Yes, your Honor.

The Court: Yes, all right.

A. I do. My idea of when it began was shortly after I wrote my letter of August the 11th, 1950, in which I criticized the medical bureau.

Q. (By Mr. Tuttle): So it would be some time shortly after August the 11th, rather than November the 20th, 1950? That was your idea as to when this conspiracy was entered into, would that be correct?

(Testimony of Miles H. Robinson.)

A. Well, I felt that the first overt act, I believe is the expression, was when the grievance committee wrote that [924] letter to Mrs. Edwards.

Q. You would consider, then, the letter as being the first overt act?

A. I would like to modify that. I just recall now that the refusal to pay my bill on Mrs. Phillips, which took place on the 23rd of August, that was the first thing, but it didn't impress me as strongly as the writing of the letter to Edwards on the 30th of—when was it—September.

Q. Well, would you say, then, that the conspiracy had been commenced as early as August the 23rd, 1950, when the bureau letter was written?

A. Well, I really don't know when these people got together, all I know is what happened to me, and the first thing that happened to me was the letter to Mrs. Phillips telling them not to pay that bill.

Q. Well, I think, Doctor, in your deposition given last fall in the case which you have pending against the American Medical Association in Chicago that you made reference in that deposition, at least once and perhaps more times, to the effect that the American Medical Association had master-minded this whole conspiracy.

Would you tell us when you think the American Medical Association got into the conspiracy?

A. Well, I don't recall saying in so many words that the [925] AMA master-minded the conspiracy. Your question is when do I think the AMA got into it.

(Testimony of Miles H. Robinson.)

Q. Yes.

A. My best opinion on that question would be that I feel and believe that the AMA was probably contacted at about the time when the Brooks complaint was referred to the state grievance committee.

Q. It was contacted when did you say, Doctor?

A. About the time when the Brooks complaint was referred to the State Grievance Committee, which I—well, you are quite right—

Mr. Sembower: Your Honor, I object to this line of questioning. On the direct examination, there was no testimony introduced that the AMA master-minded it in any respect, as being the architect of this conspiracy. It doesn't seem to me that this is proper cross-examination.

The Court: Counsel is referring to a deposition, I believe. I think, Mr. Sembower, the range of testimony in conspiracy is very broad and the range of cross-examination necessarily must be comparably broad. I will overrule the objection.

A. I was going to say that the date I had in mind, Mr. Tuttle, was October the 16th and on reflection I realize that is not when the case was actually referred to the state grievance committee, but that is the time when Mr. [926] Fullerton inquired of the state grievance committee how he could refer the case.

Q. (By Mr. Tuttle): You mean this case?

A. The Brooks complaint.

Q. That is, the Brooks complaint, when they

(Testimony of Miles H. Robinson.)

made an inquiry in October of the state about referring it, that is when you think that the AMA was contacted or the state?

A. I have no knowledge of just when the AMA was in touch with my opponents in the society, but I feel it is reasonable to assume that it was very likely contacted about that time.

Q. Now, referring to Page 36 of the deposition which we took of you in this case, Doctor, you made the statement:

“I think it was very likely he,” meaning Mr. Fullerton, “contacted the American Medical Association in between the time I resigned and they accepted my resignation and asked the AMA what to do about this fellow. I think that is extremely likely.”

A. Uh-huh.

Q. Did you have any basis for making that statement.

A. Oh, the same basis I had for making the statement I just [927] made, and that basis is this: I am thinking of the really extraordinary behavior of the society in the Brooks complaint. Here we have a man, Mr. Brooks, calling up an officer of the society on the telephone at 8:30 a.m. in the morning on October the 9th, and then without any conversation face to face with this man Brooks by these people who have never heard of him before and have never met him, know nothing about him, without any face-to-face conversation, in a matter of two days the President of the Walla Walla Society

(Testimony of Miles H. Robinson.)

schedules a full dress hearing on October the 11th, complete with the society lawyer, a court reporter, five or six or seven doctors, ready to take down a complaint of a man who one would assume might very well be a crank. They go to all this activity.

And as I look back on it in retrospect, I figure that the vigor of their approach fits in, and knowing the contact between the different organizations, state and county and AMA, that there must have been some consultation with the top authorities of the AMA.

Q. So that now reading from Page 48 of your deposition in this case, Doctor, you made the statement:

“In the second place, I have every reason to believe the AMA was contacted very early in the game and coached and advised the [928] local people here how to handle me.”

Is it your belief that the AMA was coaching and advising as early as the filing of the Brooks complaint against you and the procedures which were taken at that point by the local society?

A. Well, knowing the vital interest of the AMA in the activities of the bureau in the State of Washington, knowing the tremendous effect of my criticism, which I never expected, of the bureau upon the members of the society here, and knowing a previous case involving, for example, Dr. Shadded in Oklahoma, where he states in his book that the AMA master-minded and coached the society to dissolve itself and then reform without him a member, know-

(Testimony of Miles H. Robinson.)

ing what I do know now, I think it is quite likely that the AMA played a part in this quite early.

Q. But it is only just a matter of suspicion on your part, you don't have any evidence of that, do you?

A. No, it is merely a part of the pattern that took place later for a year or two, and that is only a suspicion.

Q. Now, you have stated in your Chicago deposition, that is, in the Chicago case, you made a statement to the effect that the AMA was smothering your opposition and the only way to do it was to run you out of town.

What reason would the American Medical Association have had for smothering your opposition and running [929] you out of town as early as October, 1950?

A. Oh, I don't know that the AMA went so far as to decide to run me out of town in October, 1950. Any such idea as that would probably be arrived at gradually, depending on whether I appeared to bow down.

I just do know that the bureau situation in the State of Washington is unique in the entire United States, as shown by the publications of the AMA itself.

Q. So that you don't think that they had anything in mind at that time such as smothering your opposition or running you out of town, do you, Doctor?

A. Well, your question covers every degree from

(Testimony of Miles H. Robinson.)

faint criticism to actually running me out of town. I really couldn't answer that.

Q. Have you completed your answer, Doctor?

A. I don't think it is possible to answer that question.

Q. Now, one of the factors which I believe you assigned as being fundamental in this conspiracy is the fact that you had attacked organized medicine, is that correct, Doctor?

A. I don't believe that reflects the substance of my remarks on that subject up 'til now, if that is what you refer to.

Q. No, I am not referring to your remarks today, I am referring to what you have given us in your depositions, [930] everything that you have said to us in connection with this case, both pretrial and what you have said on your direct testimony and what you have said today on cross-examination. I would infer from the things that you have said that one of the factors that you attribute to this conspiracy against you is that you had attacked organized medicine; is that a fair statement?

A. Oh, I don't think it is at all. I have never attacked organized medicine; organized medicine has attacked me, if there is any attacking going on.

Q. Well, have you had any difficulty with organized medicine previous to August, 1950?

A. I would say nothing of any particular significance.

Q. What about the difficulties you had when you

(Testimony of Miles H. Robinson.)

were interning at Pennsylvania Hospital in 1938, tell us about those?

A. Well, I didn't even know organized medicine existed at that time as far as being a group that would attack anybody.

Q. Well, did you have difficulties at that time, Doctor, with that hospital?

Mr. Sembower: Your Honor, I object to that as extremely remote. We have introduced no evidence concerning the internship of this man at this period except as to qualification. [931]

The Court: Wasn't that related in his background?

Mr. Sembower: He did relate in his background that he was an intern, but I don't think that brings it within the scope of the gravamen of this action. I have no objection, really, to going into it, except it widens the horizon.

The Court: Well, I think that is too remote. I will sustain the objection.

Mr. Sembower: We would have to bring in evidence on that.

The Court: I assume that the inference is that it is to his credit that he served in the usual way in internship. If it can be shown that he didn't, I suppose that would invite cross-examination.

Mr. Sembower: I think that would be pertinent. I don't think that this question is.

The Court: If he had some difficulty with organized medicine at that time, I think that would be too remote.

(Testimony of Miles H. Robinson.)

Mr. Tuttle: Well, if your Honor please, my position on this matter is that the doctor has given testimony in his deposition that he had had difficulties as early as 1938 while he was interning in Pennsylvania Hospital which he attributed to be related to this conspiracy, was one of the factors that the American Medical Association undoubtedly had in mind when they entered into this conspiracy, and I [932] feel that it is pertinent.

The Court: Well, if you have taken a deposition, you may use the deposition for cross-examination.

Mr. Sembower: Yes, if counsel can cite questions in the deposition that carry that import, I have no objection, but I don't believe he said anything of that nature.

Q. (By Mr. Tuttle): Well, let me ask you this question first and that may relate it more properly:

In 1945, did the American Medical Association's directory of doctors list you as retired, Doctor?

A. I don't know what they did in 1945.

Q. Well, have they ever listed you as retired on some other date? I may be in error on the date.

A. Yes, they once listed me as retired.

Q. And what date was that?

A. Well, it was around 1942.

Q. And did you attribute that to malice on the part of the American Medical Association toward you at that time?

A. At the time, well, and at any time, I thought first it was probably incompetence, and it has oc-

(Testimony of Miles H. Robinson.)

curred to me since that there might be some element of malice in it.

Q. Well, explain to us what that element of malice was, how it arose.

A. Well, it would relate to a little controversy we had in [933] the Pennsylvania Hospital in 1940, I believe it was.

Q. All right, will you tell us what that was, please?

A. Well, the story is substantially this: I had what is known as a two-year rotating internship in the Pennsylvania Hospital and was to extend from 1938 until the fall of 1940, and after—well, for the first 13 months I don't think I missed more than one day of work in the entire time, and at the end of that time I had the misfortune to become sick with an acute middle ear and a mastoid condition. And during that time, all of us in the hospital had very bad working conditions, I would say. That was shown by the fact that one of my friends by the name of Chapman from the Midwest, he left the hospital after five weeks without even any warning to the hospital, he was so disgusted with the conditions. Another friend of mine by the name of Gilman came down with tuberculosis during that period.

It was during the winter, I had tremendous responsibilities, I had charge of a whole ward with, I think, something like 45 people. Sulfa was just coming in and we were doing routine urinalysis on every patient who got sulfa and routine blood

(Testimony of Miles H. Robinson.)

counts, and it was a highly exhausting piece of work where we worked 16, 18 hours a day quite often. I was completely exhausted and worn out and I got sick. I was hospitalized and I [934] didn't get any better. The head of medicine of my department came around and he said, "Well, what you need is to take a rest two hours every day." Well, I pointed out to him that that was a rather laughable recommendation because all my work would fall on my friends in the hospital. So he said, "Well, we will give you a vacation of two or three weeks," and they gave me a vacation and I went home.

Well, it was the middle of our Philadelphia winter and I didn't get any better, and then they said, "Well, we will make some arrangement with you like we made with our tuberculosis intern. We will cut down your surgical service if you can get it arranged with the Department of Licenses of Pennsylvania to give you your license with a slightly shortened length of surgical service."

Well, we then spent several weeks or a month or so trying to work that out and I wasn't getting any better and the head of the licensing bureau, he would tell me, "Well, I will do whatever the hospital says," and the hospital manager said, "Well, I will do whatever the license bureau says," and it was very much like what happened here in Walla Walla, I just couldn't find out who was responsible.

So I eventually decided that I couldn't [935] work out any solution and I decided I would come

(Testimony of Miles H. Robinson.)

West, and I did so and while I was looking over how I would continue my training out here, two letters crossed in the mail, a letter from the hospital saying, "You are fired," and a letter from me saying, "I resign."

Well, I didn't like that letter of firing me and so I sat down and I sat down and wrote a little report on the conditions in Pennsylvania Hospital, because I have always been inclined to stand up for what I thought was right and I quoted my tuberculosis friend and I quoted Chapman and I described the conditions and the lack of exercise and the poor food and the business of making money off interns. We should have had that work done by paid help on a lot of this urinalysis and what not which did not use our skill.

Well, the board of managers didn't like my report very well and I think they held it against me a little bit.

So, when I came out West and I worked in Pasco very well for five months, but I still hadn't got over this mastoid. So I decided, well, the thing to do is to go back on land and the farm for a few months or a little longer, and I came up to Walla Walla to do that. And when I left Pasco, shortly thereafter the AMA directory came out and it had me listed as retired. Well, I was [936] 29 years old, I think, and I thought to myself, how in the world did they know I even left Pasco and how did they know that I was retired when I was just trying to get well by taking a rest for two or three months?

(Testimony of Miles H. Robinson.)

So I knew, of course, I had offended some of the powers in organized medicine back in Philadelphia, and I just wondered a little bit at the time whether there was any relation, but it never preyed on my mind and I never thought of it until that deposition a few months ago when inquiry was made into every possible problem that I might have ever had with organized medicine or the AMA, and I regard the whole thing as inconsequential and, while I know the AMA keeps a dossier, or whatever you call it, on every doctor on everything he has ever done, I know perfectly well I would have had no trouble with the AMA if all this trouble hadn't started in Walla Walla.

Q. But you did tell us, didn't you, Doctor, at that time that you thought that that was a malicious act on the part of the directory?

A. Well, I think it could have been a little malicious. People do things sometimes.

Q. And the letters which you sent to the hospital criticizing them, did you send them to the AMA?

A. Didn't even know the AMA—well, I hardly knew the AMA [937] existed. No.

Q. Did you think that the letters criticizing the Pennsylvania Hospital personnel were sent to the AMA by the hospital?

A. Oh, there wasn't any particular letter, I just wrote up this report. In fact, now that I think of it, I believe I was invited to write it up by one of the trustees, who was also a member of the Quaker

(Testimony of Miles H. Robinson.)

Church to which I belonged. He said, "Why don't you put down what you notice is not right here?" And his name was Evans, I happen to remember him, and he is the only person that got the report, though I suppose he perhaps passed it on to the manager of the hospital.

Q. You made the statement to us on Page 26 of your deposition, Doctor:

"In one sense, the minute I stood up for my rights at Pennsylvania Hospital, why, the conspiracy started, and if you want to, just take it down to that very point."

Now, is that what you were talking about when you made this statement to us then, the report which you had sent in to the head of the Pennsylvania Hospital?

A. If I made that statement, I had in mind, they were cutting it awfully fine on "what you mean by a conspiracy," and what I understood him to be asking me was [938] how far would I go, how far back in time would I go, to discover any resentment against me by organized medicine, and knowing that the head of medicine at Pennsylvania Hospital was a power in organized medicine, why, I just went back to that point.

But how that conceivably could have anything to do with this trouble in Walla Walla, I certainly couldn't see then when I answered that question, I can't see now.

Q. Well, what about the Oregon boards situation? You expressed to us, as I recall, in your depo-

(Testimony of Miles H. Robinson.)

sition the idea that this resentment which had been created on the part of some of the heads of organized medicine due to your attack and criticism on the Pennsylvania Hospital had manifested itself in the directory omission and it also manifested itself, at least to some extent, in your tests before the Oregon licensing board.

Will you tell us about that situation?

A. Well, first let me say that I never attacked the Pennsylvania Hospital. They had written me a letter terminating my arrangement and I was merely defending my position.

Q. All right, you were defending your position. You made a statement that the "Eastern fellows," as you put it, had had a hand in the Oregon boards situation. I would like to have you describe what that situation was, [939] Doctor, and how the Eastern fellows had a hand in it.

Mr. Sembower: Again I object to this as extremely remote, your Honor. Now, the pattern of this, of course, is that when Dr. Robinson's deposition was taken, apparently some kind of an investigation, check, had been run on him and every possibility of controversy in his past was turned up and he was confronted with questions. We are going to be placed in the position where we are going to have to introduce evidence in rebuttal on all of this matter, board examinations and internship. We have tried to keep the issues focused here. I feel it is fairly remote.

The Court: Well, as I understand it, in his dep-

(Testimony of Miles H. Robinson.)

osition he indicated that this conspiracy, which eventually matured and ripened into this lawsuit, started back with this incident at a hospital. If so, it is a proper subject of cross-examination, and if he attributed the same thing to organized medicine, it is a proper subject. I regret having the scope widened, but I can't arbitrarily limit it.

I will overrule the objection. You may proceed.

Mr. Tuttle: You may answer, Doctor.

Mr. Sembower: May we have the question repeated? I think we may have lost it in the shuffle.

Mr. Tuttle: I think I lost it, too.

(The question was read.)

A. As I said before, I don't attribute my problems in Walla [940] Walla to anything that happened before. However, I am perfectly happy to tell you about the Oregon boards situation.

It is common knowledge that a doctor when he wants to go into certain states in the Union after he has a license in another state is often met with opposition, and that is particularly true in the states which are booming—California, Oregon, Washington, and Florida. In support of that statement, Dr. Roundtree, who is a friend of mine and who was head of the Selective Service all during the last war, told me that when he went down to take the Florida boards, only a handful of 50 or so men that went down passed these boards, and there was a recent article in *Medical Economics* which described the very bad situation whereby these examinations are not honest examinations.

(Testimony of Miles H. Robinson.)

But however that may be, when I took the boards in Oregon, I failed those boards twice, and I was rather surprised because I compared answers with other men and found I did better than they did. The one particular man had a job all waiting for him and he went right in. And it is, I think, common knowledge——

The Court: Pardon me, I don't think that that is material here, whatever happened there, unless you attribute it to having some connection with this. If you say no, I [941] think that is the answer, perhaps counsel would like to interrogate further, but if you don't attribute that experience to anything that happened here, why, I don't think it is material at all.

A. Your Honor, I don't relate that experience to Walla Walla in any way.

The Court: I see, all right. Well, I think that is the answer.

A. I would like to say that that is common for men to try to come in a state and fail to get in, to get a license to practice medicine.

Q. (By Mr. Tuttle): Well, then, I will ask you, Doctor——

The Court: I think one of the leading lawyers in Tacoma failed a bar examination twice, so that that doesn't mean much.

All right, go ahead.

Q. (By Mr. Tuttle): I will ask you, Doctor, if this was the questioning and testimony in con-

(Testimony of Miles H. Robinson.)

nection with this, quoting from Page 22 of the deposition in this cause:

“Q. And, of course, this Oregon board stuff occurred after retirement reference in the AMA directory so I want to make sure you are not going to claim there is any relationship between your prior difficulties, which you think may have [942] been related to your directory trouble, the relationship between prior difficulties with organized medicine and the local boards in Oregon. There wasn't any relationship at all there, was there?

“A. Yes, there was.

“Q. I thought you told me there wasn't?

“A. I will tell you exactly how. If I told you that, that is not what I meant.

“Q. I'm sorry if I misquoted you.

“A. What I meant was there was not necessarily any relationship because what happened to me in Oregon could happen to other people, and had over and over again, but I think there was definitely a relationship there because when a man comes up for examination, the top medical men take an interest in these candidates. For example, Dr. Howard Luce is head of medicine in the University of Oregon and while I was waiting to take the examination, I worked as kind of a visiting fireman in the clinic and I had a lot of conversations with the top doctors and they all said, “You are going to get 100 [943] on every subject.” I don't know what made them say that. I am trying to get my dates

(Testimony of Miles H. Robinson.)

right. This was after I had had my research work. I had been teaching physiology and doing experimental work in pharmacology. I think they almost flunked me in the subject I was teaching in top medical schools in the East. The fellow said, "Gosh, I think you are going to get 100 on every subject; not because I was bright, I didn't mean it in that way; I meant my reputation would help me and we had some influential friends in Portland who were wealthy people and very well connected.

"Q. You mean your family?

"A. My family, yes. And the idea was this man kind of hinted where we lived, where we bought the house and the nice people we knew, and he kind of hinted that they would put in a word for us, and one way and another if we got enough words put in for us, there wouldn't be any question about getting good marks. What happened is this, those fellows that were [944] telling me, as I look back on it, I think were kind of jealous because it just happened I overheard them once when they didn't know I was listening, I was down the hall—

"Q. (Interposing): What hall?

"A. In the medical out-patient clinic at the University of Oregon Medical School, and I happened to hear this very fellow who was saying how I was going to get 100 in all subjects—

Mr. Sembower: Your Honor, I object to this. This was exactly the type of answer the witness was giving a moment ago, which is entirely a matter of speculation. At this time I think the witness is not

(Testimony of Miles H. Robinson.)

represented by counsel at the first part of his examination, and I don't think that is at all probative, it has no relation to this suit. He has testified that this incident was not linked by him at all to the Walla Walla matter.

Now, there may be a good deal of gossip and scuttlebutt that may always pass around whether it is a bar association examination or medical association about this sort of thing, but it doesn't sound probative.

The Court: I don't think it is material, counsel, unless what you are reading here is inconsistent with the [945] answer that he has made, that he didn't attribute any connection now. What you are endeavoring to read is capable of another interpretation, that he then attributed some connection.

Mr. Tuttle: Your Honor, I started out reading here where I asked a question:

“Q. There wasn't any relationship at all to this conspiracy, was there?”

“A. Yes, there was.

“Q. I thought you told me there wasn't?”

“A. I will tell you exactly how it was related.”

Now, he has told us today it is not related and I am now reading the answer on how he related it.

The Court: Well, I got lost on the answer.

Mr. Sembower: So did I.

The Court: Well, go ahead.

The Witness: Perhaps I could answer that.

The Court: Perhaps the witness can explain

(Testimony of Miles H. Robinson.)

what he meant there by saying he thought there was a connection.

A. What I had in mind——

Mr. Tuttle: Just a moment, Doctor, I thought we would finish this to see if this was your testimony at that time.

The Court: All right. [946]

Q. (By Mr. Tuttle, reading continued):

“And I happened to hear this very fellow who was saying I was going to get 100 in all subjects, I heard him talking to the head of medicine, saying, ‘What are we going to do with this fellow Robinson?’ in a very deprecatory tone. That man was treating me beautifully whenever I saw him. I came very highly recommended from the men back east, they were treating me very nice, but behind my back they resented me and I never dreamed it because I was trying to be decent and do my work. So when I heard that, I wasn’t quite too surprised when I found out I flunked one or two subjects, and each time I flunked it, they wrote me a letter and said, ‘Doctor, what are your plans?’ If I said I was going to go to Bend, Oregon, I’ll bet I would have passed, but, no, I thought I was going to live in Portland with nice cultural advantages for the children. The way to pass these examinations is to say you are going to live in some little place where they need a [947] doctor.

“Q. In other words, they don’t want competition?

“A. They don’t want the competition in desir-

(Testimony of Miles H. Robinson.)

able places where other doctors want to raise their kids. These heads of medicine are very well connected back East and one of those fellows was a close buddy of the man who was my head of medicine at Pennsylvania Hospital. In fact, he told me he had been in correspondence about me. At one time he told me that, kind of hinting I had some trouble and the way it looks is this: The big men over the country are kind of buddies of each other and the first thing a big doctor in a place like Portland does when a new fellow comes to town is he finds out where that new fellow interned, what kind of a guy he was. Well, that is legitimate, but you can just imagine what kind of report went from the head of medicine of Pennsylvania Hospital out to these men in Portland. It was undoubtedly a report that I was a very obstreperous fellow [948] that didn't kowtow to the big shots and they had better put me in my place for the good of the boys, so I think that was a factor in my failing these examinations. That is not the only factor. As I told you first, there is always the local problem.

“Q. It is perfectly clear, isn't it, that there wasn't any relationship between the Oregon situation and the conspiracy, absolutely no relationship, is there?”

“A. Oh, no; that is where I disagree with you. As I said, when you have relationships with organized medicine and you have a little difficulty with them, then you may have more difficulty with them and each time the fellow stands up for his rights.

(Testimony of Miles H. Robinson.)

In a situation like that, he builds up resentment in organized medicine against him and I think it is a perfectly honest statement to say that resentment was building up against me, as it does probably against a lot of young fellows. I don't think it would ever have amounted to anything in particular if it hadn't had more [949] fuel added to the fire when I came to Walla Walla and said, 'Well, I am not going to make any statement here and I am not going to be pushed around any more.' "

A. May I interrupt? That is a misquotation of what I said, if I may interrupt, your Honor.

The Court: All right.

Q. (By Mr. Tuttle): That is all right, go ahead.

A. It doesn't make sense, in the first place, something about I don't make any statement here. What I said was, what I had in mind was that in Walla Walla I was just going to make a stand, and I left Pennsylvania Hospital on account of my health and I couldn't get into Portland, but in Walla Walla I intended to stick and that is what I was trying to convey and I think the reporter has taken "stand" to "statement," something of that kind.

Q. Well, then, is it your testimony today that people in the East had sent reports to the license board of Oregon regarding your previous criticisms of the Pennsylvania Hospital?

A. Well, I know that to be a fact, and I have a letter in my possession, which hasn't been intro-

(Testimony of Miles H. Robinson.)

duced, but from the head of the hospital back there referring to a visit with me out in Portland. He came out to Portland and I [950] know that—well, Dr. Lewis himself told me that, he showed me a letter from the head of medicine in Pennsylvania where I had interned. He didn't let me see what was in it, but he held it out. He says, "I have got a letter here from Duncan and he talks about your work at Pennsylvania Hospital." And he did this before I took the examinations and at the time he pretty clearly implied that there had been a little trouble back there and he also reminded me that Dr. Duncan was a close personal friend of his, Dr. Lewis. So I was able to acquire from that contact, from that incident, that there was a contact between the East and the West in that particular case.

But I think that what you have in mind there, Mr. Tuttle, where you are misinterpreting, where I am not understood here, is that when I came out against the secret committee here and made criticism of the bureau, why, and all this trouble stirred up, I think that the AMA was undoubtedly advised and they looked up their dossier on me and said, "Oh, yes, that is that fellow that created a little stir in Pennsylvania Hospital some years back." And I can conceive that when they looked that up, that they might have taken a little more vigorous participation in things out here in Walla Walla just on the basis of the fact that I was an independent [951] man and had stood up for my rights at that early day.

(Testimony of Miles H. Robinson.)

But I mean that is the only link that might just condition the attitude of the AMA a little bit one way or another as a result of those old experiences. So your use of the word "conspiracy" and my use of it at that time was stretched awfully thin and I was just trying to describe the background which might condition the attitude of the AMA to take a more vigorous attitude towards me.

Q. But those are the facts which you thought were on file with the AMA, the facts that you have been relating to me now and which you think spurred them on the minute your name came up, is that correct?

A. Oh, I didn't say they were on file, but the medical profession, and especially the AMA, is not a very big outfit and the prominent doctors in each city all over this country are very well acquainted with each other, and I was in the oldest hospital in the United States, the Pennsylvania Hospital, and its top doctors are very well known and then I had that contact out there in Portland in which the matter was brought up again, so I don't know what is on the file of the AMA, I never said that.

Q. You didn't know whether anything was on file or not, you would say maybe nothing was on file with them at the [952] time they supposedly called from Walla Walla to the AMA?

A. Oh, well, whether it is in their head or on file doesn't make any difference. The AMA, if they want to look up a man, they just look up where he interned, that is all, and make an inquiry.

(Testimony of Miles H. Robinson.)

Q. Well, then, what statement did you have in mind when you made this one, Doctor: Reading from page 48 of your deposition:

“Q. In other words, the AMA didn’t have you in mind at all, they had anybody in mind and you happened to get it?

“A. No, I wouldn’t say that. The AMA keeps a dossier on every doctor in this country with an IBM system, and I am absolutely confident that the AMA knows every fact about me from the beginning of my relationship in medicine. They have got it all in their master file on me, and the minute the Walla Walla Society or Bureau contacted the AMA and said, ‘We have got a tough situation out here, we have got an independent doctor who isn’t going along with us,’ the AMA instantly said, ‘Who is he?’ and they push the right [953] buttons on their calculators and out popped my file, and right away the AMA says, ‘By George, that is a fellow that was so ornery back in Philadelphia.’ So they put one of their men on the job and he says, ‘You had better give him the works, he is a tough customer,’ and that is just the way the AMA works.”

Now, did you have that in mind, that they did have these things on file regarding your difficulties as an intern?

A. Well, I think I really dramatized the situation there. I have been through the AMA building in Chicago and they do have an IBM system and it

(Testimony of Miles H. Robinson.)

is kind of a family outfit in a lot of ways, a bit gossipy, but I think I really over-dramatized the situation. I don't think it is quite like the FBI, if that is what you mean.

Q. So that the AMA, then, wouldn't have had any basis, would they, when they were contacted by the local group out here, to have immediately gone into action and started looking into your record?

A. No, I don't think that is true at all, I think they would have some basis, and as far as immediately going into action, the AMA is not known for being very immediate in going into action, but I think that they gradually [954] leaned their weight on me. That expresses it.

Q. So it was just a gradual process, probably they weren't contacted, as you indicated here before, and were given any information between the time when you wrote your letter of resignation and the time it was accepted by the bureau?

A. Well, your question is a contradiction in itself. You want me to admit that it is a gradual—

Mr. Sembower: Your Honor, the question could be a little clearer. He says the question is a contradiction.

The Court: Yes, it wasn't entirely clear to me. I think you—

Mr. Tuttle: All right, we will restate the question, doctor:

Q. Then on the basis of what you have testified

(Testimony of Miles H. Robinson.)

here about the AMA going into action so slowly, is it still your testimony that it is your belief that the AMA was contacted between the time of your resignation, your letter of August the 16th, 1950, and the acceptance of that letter by the bureau?

A. Oh, I think that would be preposterous, that is a matter of two weeks, and, oh, I think that is ridiculous.

Q. Well, then, what was the basis of the statement when you made it in your deposition? Was it preposterous at that time? [955]

A. What I have just said this morning is that somewhere, I don't know where, but the way this Brooks complaint was handled, not sooner than that, I would say, but I don't know when they did it, but you asked me for a guess and I am just guessing. Somewhere around from then on somewhere, I don't know when they contacted them.

Q. You stated on Page 36:

"I think it is very likely he contacted the AMA in between the time I resigned and they accepted my resignation and asked the AMA what to do about this fellow. I think that is extremely likely."

Now, it is your testimony today that that is a preposterous statement?

A. Well, it is all a guessing game, Mr. Tuttle, really, and at that time I was sitting in the AMA headquarters and I guess it seemed a little more likely and I am 2,000 miles away and it doesn't seem quite so likely, but I was just being asked

(Testimony of Miles H. Robinson.)

to guess at a thing that I couldn't possibly know.

Q. Well, now, you alluded to competition as being another factor in this conspiracy. In what way has competition entered into it, Doctor?

A. Well, competition is just basic in the relations of all [956] men to each other in all fields.

Q. Do you think there is a conspiracy going on among all competitors at all times, or how does competition enter into this particular picture?

Mr. Sembower: Oh, your Honor, I think that is an awfully general question. I do not recall any testimony about competition.

The Court: Yes, I will sustain the objection to that unless you specifically call attention to some statement that he has made in a deposition.

Q. (By Mr. Tuttle): Well, referring to Page 27 of your deposition, you made this statement:

“Well, it is the first I think of at this moment. Actually, I mean my row with the Pennsylvania Hospital was in many ways the first evidence, you see, because that is where you run up against money. Those doctors on top are trying to hold down the young fellows and they only want to see succeed the bootlickers, fellows who will stand infinite abuse, go on for years without expecting money or anything else.”

Now I am asking you if you felt that was a competitive factor which entered into this conspiracy?

A. You started your question with [957] something——

Mr. Sembower: I object to that question, does

(Testimony of Miles H. Robinson.)

that relate? I don't know whether that relates to the Pennsylvania situation or this one or what.

The Court: The testimony, as I get it, relates to the Pennsylvania Hospital situation, doesn't it?

Mr. Tuttle: And that those doctors on top were trying to hold down the young fellow.

Q. I mean, do you think that in any way related to competition, top doctors, established doctors, trying to hold down the young fellows?

A. Oh, I think that is a chronic condition and not to be concerned about particularly. That is another basic fact of life and you were apparently drawing out my philosophy pretty thoroughly here, but I don't quite get your question.

Q. Well, have you stated previously that competition is a factor which has entered into this conspiracy, one of the motivating factors?

A. Well, I think it is pretty obvious that if I am pushed out of Walla Walla, that it is quite an advantage to some doctor who stays and gets my patients, so competition is certainly a natural factor in that sort of thing.

Q. And do you think it had some part in this thing? We recognize that there is competition every day among [958] doctors, but do you think competition was one of the factors in this alleged conspiracy?

A. Well, if it is common every day among doctors, it is going to be a factor in anything they do.

Q. Well, do you think it was one of the basic factors in this conspiracy, competition?

(Testimony of Miles H. Robinson.)

A. Oh, no, no.

Q. For example, you have testified that Dr. Stevens was a competitor of yours, and I believe——

A. Yes.

Q. And I believe you said that was one of the reasons why——

A. Well, I think that added a little fuel to the fire, yes.

Q. That is all you would be willing to say, that it just added a little fuel to the fire; you don't really feel that any of these men were hounding you because they were competitors of yours, do you, Doctor?

A. Well, I don't know how much fuel you have to have to have it qualify under the word "hounding." It is just one of the factors.

Q. You may not know the answer to that, but are you willing to state that none of these doctors who you claim were your competitors were after you because of competitive reasons?

A. Oh, no, certainly wouldn't state that. In other words, I think that was a very considerable factor in attacking [959] me.

Q. You think competition, then, was a considerable factor in the doctors attacking you?

A. A basic factor, yes, but one which gentlemen ordinarily control.

Q. Well, now, what doctors do you consider were attacking you because of competitive reasons?

A. Oh, the defendants.

(Testimony of Miles H. Robinson.)

Q. Just all the named defendants, or were there others?

A. Well, we tried to list all the doctors that we felt did me a wrong.

Q. For competitive reasons? A. Why, no.

Q. Well—

A. Because they did an unjust thing.

Q. But I thought I had asked you the question what doctors had done wrong to you because of competitive reasons and I thought you had named all of the named defendants in this complaint. Am I wrong?

A. Well, I certainly don't have in mind any doctor at the moment who has done anything wrong to me who is not named in this lawsuit.

Q. Well, then, it is your testimony, I assume, from what you said a few minutes ago, unless I misunderstood you, that the doctors who were named on this complaint were [960] wronging you for competitive reasons?

A. Oh, not at all. That is ridiculous.

Q. You didn't make that statement?

A. No, competition is the basic factor in any doctor's life, but I am considering—I mean the matters being considered is the wrongful things they did to me.

Q. And, then, you are willing to state that they didn't do anything wrong to you because they were competitors of yours, did they?

A. Well, that wasn't the main reason they did anything wrong.

(Testimony of Miles H. Robinson.)

Q. Was it a reason at all, Doctor, that is what I am trying to find out?

A. I am really lost in your questions, Mr. Tuttle, I'm sorry. If you could put it some other way, maybe it would help.

Q. Was it a reason why they attacked you, these particular doctors, that they were competitors of yours?

A. It seems almost like a problem in semantics, really, I mean the meaning. I think that when men compete with each other, that competition is a condition which has something to do with one's attitude.

Q. Well, then, as far as the factor of competition is concerned, you are willing to say that that had no bearing on this conspiracy, that is just one of the—— [961]

Mr. Sembower: Your Honor, I feel that question is argumentative.

The Court: Yes, I will sustain the objection. I think he has answered that it was a factor and explained it to the extent he thought it was. I will sustain the objection.

Q. (By Mr. Tuttle): What about the factor of jealousy, did that play any part in it?

A. Well, I would put it this way, that neither competition nor jealousy are precipitating factors in this controversy.

Q. They are precipitating factors, you say?

A. Are not.

(Testimony of Miles H. Robinson.)

Q. On Page 38 of your Walla Walla deposition, Doctor, you stated this:

“One of the reasons that the local men attacked me so savagely, I think, was jealousy, which is common enough in any profession, and that jealousy showed some signs earlier than August the 17th and one of them was that kind of natural trouble you have,” and so on.

You have stated there that that was one of the reasons that the local men attacked you so savagely, so would you say that that was just one of the day-to-day [962] factors just in the competitive world, or aren't you attributing jealousy as one of the basic precipitating factors in this conspiracy?

A. Oh, I would answer yes, that jealousy is a day-to-day factor that everyone runs into and is certainly not a precipitating factor in going after me.

Q. Then, that wasn't one of the reasons why they attacked you so savagely, was it?

A. We are talking about precipitating factors.

Q. Well, I am asking you, then, if you think that was one of the reasons why they attacked you so savagely?

A. Oh, I think you could say that that is one of the reasons. It is probably always one of the reasons why such an attack would be made.

Q. Well, had any of these doctors exhibited jealousy toward you in any way prior to that time? Can you think of one instance where anyone exhibited any jealousy toward you?

(Testimony of Miles H. Robinson.)

A. Oh, I think that is something that you expect and when you are a new man coming into town and just a general feeling that you run into it once in awhile, really didn't concern me particularly. I never really gave it a thought until this interrogation, which was delving into every conceivable circumstance and background and I really just went into it very deeply, is all. [963]

Q. Well, then, you are willing to say that there weren't any doctors who had exhibited any jealousy in any way prior to that time, is that correct?

A. I don't think of anything in particular right now.

Q. Now, you have testified that you think it was your resignation from the Bureau on August the 17th, that is, your letter of August the 17th, 1950, which set off this whole thing? A. Yes.

Q. Do you think that it was your resignation that set it off, or was it the views that you had expressed in your letter of August the 11th, 1950?

A. Both.

Q. You think it was both of those factors, then, that set this thing off against you?

A. Oh, yes.

Q. Do you think that those were the precipitating factors of the conspiracy?

A. Oh, I would say so.

Q. Do you think there was anything else involved at all, or just that alone? You have eliminated competition as a factor, you have eliminated— A. Oh, no, no.

(Testimony of Miles H. Robinson.)

Q. —jealousy as a factor?

A. As a precipitating factor, not as a factor in general. [964]

Q. We are getting back into semantics again. You used the term.

A. Well, it is your choice—

Mr. Sembower: Your Honor, I think counsel is arguing there and confusing us a little by leading us back into the woods.

The Court: Well, proceed.

Q. (By Mr. Tuttle): Maybe I am confused. I want to either get rid of competition and jealousy factors in this conspiracy, whether you call them precipitating or otherwise. Are they related to the conspiracy, Doctor, in any way? I mean, is there anything unusual about the factors of competition and jealousy which you think contributed to this conspiracy, or shall we set those aside and say that this was the only factor involved?

A. Well, all I can say, without repeating myself, is that the precipitating factors were the criticism I made of the bureau and my resignation from it.

Q. And by that do you mean that they are the only basic factors?

A. Well, I just said precipitating factors, which is entirely different from basic factors.

Q. Well, then, tell us what the basic factors are in this conspiracy. You take the term and you tell me what the basic factors are. [965]

A. Well, I think the precipitating factors are—

(Testimony of Miles H. Robinson.)

there are two meanings of the word "basic." I think that is the difficulty that I am having.

Q. Well, in order to avoid confusion to my questions, I just want you to tell me what factors you assign as being present in this conspiracy, and you can add any adjectives to the word "factor" that you want. Tell me how it fits into the picture. I will just make my question that broad.

A. Well, I will just simply say that I consider that the chief cause of the conspiracy was my criticizing the bureau and my resignation from it. Anything else could exist all the time without stirring up any conspiracy.

Q. That is what I asked you five minutes ago, wasn't it? Isn't that the only factor in the conspiracy?

The Court: I don't think that is a proper question.

Mr. McNichols: I won't object to it, then.

Q. (By Mr. Tuttle): Now, have you testified previously that you thought it was odd and that it was mysterious that your resignation wasn't accepted at once upon your writing the letter of August the 17th?

A. Well, all I can tell you is what I know, and that is two weeks went by with no acceptance of the resignation, which I thought was odd, knowing how prompt Mr. Fullerton is in his business. [966]

Q. Well, did you think there was anything very strange about that or very mysterious about it in any way, that it wasn't accepted?

(Testimony of Miles H. Robinson.)

A. Well, just looking back, which is the only way I can describe how I feel about it, they waited two weeks and then they held a meeting and accepted my resignation at the meeting, as if you had to have a meeting to get out of the thing. I just assumed that I would get a letter back from him or maybe a phone call and say, "Well, sorry you are leaving, but that is that."

Q. Well, he is only the secretary of the organization, isn't he, Doctor? Anything odd about the membership accepting it, rather than the secretary?

A. Well, of course, during that time he was trying to persuade me not to get out of the organization and that seemed a little odd. I had written a careful letter explaining how I felt about the bureau. I then, five days later, sent in my resignation. And I really thought he would just accept it and I didn't expect I would have to argue with him in order to get out of the thing.

Q. You stated here on Page 35 of your deposition:

"Instead of that, they have to hold a meeting of the bureau and formally accept, as though I couldn't get out of the darn thing without having a meeting about it, so I saw [967] right away something was cooking, something to put the heat on me, to use a common expression."

What did you think was cooking?

A. Well, I'll tell you, in that interval the Bureau wrote me, in effect, a letter refusing to pay a bill that I had sent in for \$17.00 on a patient that

(Testimony of Miles H. Robinson.)

I had cured, and that is the first time I had ever had such a letter written to me, and I thought, well, that is a pretty time to decide not to pay my little bill just when I am getting out of the bureau, so I thought something was, as you say, going on.

Q. But here you were talking about the fact that your resignation just hadn't been accepted yet and you were attributing something big cooking, to that effect, not the \$17.00 letter?

A. Well, I probably failed to mention at the time when you asked that question that this letter had been written telling my patient not to pay the bill. That is the letter to Mrs. Phillips, who had been my patient for a long time and all her other bills had been paid by the bureau, bills that I had rendered to her.

Q. So that between the two facts, one, that they were delaying accepting your resignation, and, two, that they had written this letter to Mrs. Phillips and sent a copy [968] of it to you, you were expecting something big to happen, you were looking for something to put the heat on you, so to speak; is that correct?

A. Well, I may have exaggerated slightly. I knew it looked awful big from here, looking back to all that has happened since.

Q. Well, who in particular resented your views in connection with your resignation?

The Court: I'm sorry, I didn't get that?

Q. (By Mr. Tuttle): Who in particular, Doctor, resented your view?

(Testimony of Miles H. Robinson.)

Mr. McNichols: I was going to ask the witness if he knows.

The Court: How would he know? If somebody indicated resentment, he might know it, is that what your question implies?

Mr. Tuttle: Well, he has testified previously, your Honor, that his views were resented in the society, and I want to know who resented them.

The Court: Well, the thought I had in mind, he couldn't possibly know that. He might know if they expressed resentment, he would know about it, but how would he know——

Mr. Tuttle: Oh, I'm sorry, yes.

Q. Who evidenced resentment and in what way?

A. Dr. Balcom M. Moore was one. [969]

Q. And in what way, Doctor?

A. Well, he wrote me a five-page letter criticizing my views and expressing the thought that he didn't care if I left the bureau since that left more money for the rest of them. Then he also wrote me a letter on January the 8, 1951, and asked me why I didn't get out of the society, as well as the bureau, which was a rather harsh thing to say, because if you get out of the society, you instantly lose all your hospital privileges and you might as well leave town.

Q. Well, I didn't want to get into that phase of it yet, I am talking about resentment of the views expressed in your August the 11th letter.

A. Well, I am talking about that, also.

Q. You are saying that this January letter also

(Testimony of Miles H. Robinson.)

related to that? A. Why, I would say so.

Q. All right. Now, in your letter which you wrote August the 11th, didn't you invite the members of the society to criticize your views in any way?

A. Yes, but I didn't invite them to encourage me to leave town.

Q. I am not talking about that, I am talking about the evidences now of resentment at or about the time you wrote that letter, say up until the 1st of October, 1950? [970]

A. Well, I couldn't place the date quite that close, I don't believe.

Q. Well, the Moore letter was later than August, on October 1st, wasn't it?

A. I just don't know when it was. It was around about that time.

The Court: What was the date of Dr. Moore's letter, Dr. Robinson?

A. Well, I do remember the second letter, your Honor; it was January 8th.

The Court: Oh.

A. 1951. But the first letter was some time in the fall and I don't recall when.

Mr. Tuttle: September 21st.

The Court: September? Yes, all right, go ahead.

Q. (By Mr. Tuttle): Dr. Moore's letter, I believe, was September the 1st, Doctor, and he wrote you as President of the Bureau, did he not?

A. I assume so, but he didn't state in his letter what his office was and I don't recall for sure now.

(Testimony of Miles H. Robinson.)

I only know that he was probably the most active one in the bureau.

Q. But his letter of September the 21st was a rather lengthy discussion of your views and what he felt were his views in connection with it; it wasn't a bombastic letter in any sense of the word, was it? [971]

A. I thought it was——

The Court: Is that letter in evidence?

Mr. Kimball: It is. I am getting it now, your Honor.

The Court: Oh.

A. I thought it was a rather intemperate letter, containing the remark that there would be more money left for the rest of us if you got out.

Q. I would like to read you some of the parts of this letter, please, Doctor, and ask you how you think they evidenced resentment on the part——

The Clerk: This letter isn't in evidence.

Mr. McNichols: I think possibly if you read part of it, you should read it all, Mr. Tuttle.

The Court: Mr. Granger says the letter isn't in evidence. What number is it?

The Clerk: 13.

The Court: 13. No, it hasn't been admitted. Do you wish to offer it?

Mr. Tuttle: We will offer it.

Mr. Sembower: We have no objection.

The Court: Do you have any objection?

Mr. Sembower: We have no objection. We don't think it is material, but we have no objection.

(Testimony of Miles H. Robinson.)

The Court: Well, Plaintiff's Exhibit 13 [972] will be admitted, then. [973]

* * *

Q. Now, Doctor, reading from your letter of August the 11th and calling your attention to your last paragraph, you stated, did you not:

“For these reasons, I intend to resign from [985] the programs of the Walla Walla County Welfare Medical Program, the Medical Bureau, and the Veterans Program. As I mentioned earlier, I would be very glad to have your reaction to this letter to the end that I might get the facts as much as possible in line with the true state of affairs.”

Now, do you think there was anything in Dr. Moore's letter other than what you had invited?

A. Yes.

Q. And will you please tell me in what respect you think that letter indicates resentment to your ideas? A. May I see the letter?

Q. I am handing you Plaintiff's Exhibit 13.

A. Thank you. I had previously mentioned the last paragraph on the last page, this subject which I will read here. He says:

“I don't care whether any one doctor does not care to participate in our programs, especially if that doctor is expensive to the rest of us.”

And I interpret that statement to mean that he felt I was expensive to the rest of the doctors on the program and if I were off the program, there would be more money left for the rest of them. [986]

(Testimony of Miles H. Robinson.)

Q. Well, does that express resentment, that there is going to be more money left for the others?

A. Well, if I were not resentful of a man, I would not remind him that he was taking money away from me and my friends unjustifiably, which is the meaning of his remark here.

Q. Well, if he were trying to harm you, Doctor, as you think because of this resentment which you find in this letter, do you think he would have gone to the trouble to sit down and read your letter and digest your ideas and sit down and give the hours of thought which must have gone into his reply to you?

A. Well, I really don't know entirely what was in Dr. Moore's mind.

Q. So that perhaps resentment was not in his mind, isn't that correct, Dr. Robinson?

A. Well, I think the letter shows that he was resentful.

Q. Don't you think that the letter shows that he was trying to be helpful to you, to give you his ideas of where he thought you were wrong, where he accepted your invitation to express fully and at length his disagreement with your ideas?

A. Yes, he accepted my invitation.

Q. And you still think there is something more in that letter than just his expressing his views, which happened [987] to disagree with yours?

A. Yes.

Q. Do you think that resentment is based just upon that fact of disagreement?

(Testimony of Miles H. Robinson.)

A. Disagreement with what?

Q. Do you think that his resentment, of your attributing resentment to Dr. Moore, is that based just upon the fact that he held views which were counter to yours and expressed them?

A. I don't think I quite understand.

Q. Well, I mean do you mean that the resentment which you say he expressed there, is it based on anything more than the fact that he was disagreeing with you? A. Why, yes.

Q. Well, in what way? You mean just because he said that if you were out, there would be more money left for the rest, is that it?

A. Yes, that is one thing.

Q. Is there another thing?

A. Well, in his analysis that it cost more a patient to come to me. I just happen to know that is not true. I have examined the analysis sheets that they put out and that just isn't true.

Q. Well, I thought you had resigned at that time?

A. Yes, but I still retained the analysis sheets that had [988] been sent to me previous to that time.

Q. So that those are the two things which you believe expressed resentment on the part of Dr. Moore?

A. Well, those are two of the things.

Q. I didn't get your last answer, Doctor.

A. Those are two of a number of things.

(Testimony of Miles H. Robinson.)

Q. Well, will you give us the rest of the number of things?

A. Well, you will recall he refers several times in the letter to how much worse off things would be under state medicine and he, of course, felt that this bureau program fought state medicine.

Q. Well, it was just a disagreement, wasn't it, of his opinion with you?

A. Well, I am, of course, looking back on it from now and—

Q. That's right, but there isn't anything there, is there, to indicate any resentment?

A. Well, I also had talked with Dr. Moore numerous times and heard him express his viewpoints in meetings and I knew very well that he was devoted to the bureau and disagreed very much with my position, which was that there was no difference between the bureau and state medicine which justified the way the bureau was operated.

Q. But to get resentment, as you see it now, you have to come down and look back on the situation, don't you, Doctor. [989]

A. Oh, no.

Q. You have no reason to think that he resented anything at that time; it was after your expulsion that you began to suspect that Dr. Moore had resented something, isn't that true?

A. No.

Q. Well, I thought you just said, "Looking back on it now, I feel that he resented it"?

A. Looking back on it adds to my understanding, but it was perfectly clear from this letter that

(Testimony of Miles H. Robinson.)

from the two points I mentioned at the time that he resented my position.

Q. And is it your testimony that you read that letter and from those points you felt that here is a man who greatly resents me, I better watch out for what he is going to do to me, was that in your mind at the time?

Mr. McNichols: Your Honor, I hesitate, but I am going to object to any further argument with the witness about this. I think he has testified that his knowledge of the man, his reading of the letter, gave him an impression, and I don't see any sense in badgering him.

The Court: Yes, I think you have pursued that far enough.

Q. (By Mr. Tuttle): Now, who else evidenced resentment toward you at that time, Doctor, because of your views [990] expressed in the August 11th letter?

A. I don't think of any other particular thing, except I would say some chilliness in the atmosphere in meeting other doctors who were keen on the bureau.

Q. And Dr. Moore is the only one you could name at that time who expressed any resentment? I am not trying to be repetitious, but I just want to be sure that is your testimony.

A. Well, just this minute, that is the only one I think of. I could add this, Mr. Fullerton was somewhat resentful that I had resigned from the

(Testimony of Miles H. Robinson.)

bureau and tried to persuade me not to go ahead with it.

Q. Well, you mean he just wanted you to stay in the bureau. Was it anything more than that?

A. He gave me the impression that he resented it.

Q. Well, I mean that was his job, wasn't it, Secretary of the bureau, and you expected that he would want you to stay in?

A. Well, I didn't dwell too much on his motives, I didn't know them all; I only know he was resentful.

Q. Well, in what way did he evidence his resentment other than to ask you to stay in the bureau?

A. Well, I suppose it is the way he said it.

Q. Can you tell us how he said it?

A. Oh, I don't believe I could put that into words. It is [991] five years ago; I don't just really recall.

Q. Do you remember what he said?

A. He said, "We hate to see you leave and we hate to have you break our united front." I believe I talked to him a couple of times and the first time he was entirely pleasant about it; the second time he just acted offended.

Q. Well, are you confusing regret with resentment in your use of the term?

A. No, I don't think so.

Q. Now, you testified the other day on direct examination, if I remember right, Dr. Robinson, that

(Testimony of Miles H. Robinson.)

Dr. Pratt was the screener of the bureau, is that correct? A. Yes.

Q. And I believe you also testified, when you mentioned that Dr. Pratt was the screener, that he had previously evidenced unfriendliness toward you, is that correct?

A. Well, he has exhibited lack of friendship, yes.

Q. And will you tell us in what way he exhibited a lack of friendship to you?

A. I am just trying to think of the dates there.

Q. Well, that would be prior to August, 1950?

A. Oh, I don't think there was any lack of friendship prior to August.

Q. Then, you didn't mean the statement that you made in [992] court the other day that the screener had evidenced unfriendliness toward you, one of the reasons you resigned from the bureau?

A. What statement are you referring to?

Q. I am referring to your testimony in court here about two days ago. I remember that you were testifying about your reasons for leaving the bureau. One of the reasons you assigned to it was that Dr. Pratt, who was the screener, had previously evidenced unfriendliness toward you?

A. I don't recall that at all.

Q. You don't recall? Is it your testimony now that Dr. Pratt had at all times exhibited a friendly attitude toward you up until that time?

A. Well, you will have to give me a date.

The Court: Up to the time of your resignation

(Testimony of Miles H. Robinson.)

from the bureau, isn't that what you are talking about?

Mr. Tuttle: Yes.

The Court: Up to the time of your resignation from the bureau.

A. Well, I don't recall any unfriendliness prior to my resignation from the bureau.

Q. (By Mr. Tuttle): Well, I took down this note the other day in testimony and see if it refreshes your recollection: "Dr. Pratt, who was the screener, had shown some evidence [993] of antagonism toward me."

A. Well, yes, but at what time?

Q. Prior to that time?

A. Oh, I don't recall.

Q. Well, as I recall, in the depositions you told us that Dr. Pratt had evidenced unfriendliness toward you as early as the time before you came into Dr. Robinson's office.

The Court: Dr. Campbell's office.

Mr. Tuttle: Dr. Campbell's office.

Q. You told of a discussion you had had when you were acting as a third assistant in connection with an operation that you had, that you felt Dr. Pratt had been unfriendly toward you?

A. Well, I don't—I remember the incident. It seems to me that was after I came in with Dr. Campbell, but I am not sure just when that was.

Q. You said there were two things—I am reading from Page 332 of your deposition:

(Testimony of Miles H. Robinson.)

“Well, there were two things that bothered Dr. Pratt a great deal that had happened previously.

“Q. What were those?

“A. Well, one of them was I was offered the position of County Health Officer by [994] the County Health Officer for a period when he was going back to get his degree of public health.”

When would that have been?

A. Oh, pardon me. I don't know just when that was.

Q. It had been prior to that time in August, 1950, wasn't it?

A. I couldn't swear to that.

The Court: Pardon me, I just wanted to get the dates of these depositions, as to when they were taken. You have been referring to two depositions of Dr. Robinson, have you not?

Mr. Tuttle: Yes.

The Court: When was the first one taken?

Mr. Tuttle: The deposition in this suit was taken commencing in October and was completed in January, this previous January.

The Court: Yes. I understand. Where was that?

Mr. Tuttle: Those were taken here.

The Court: Oh.

Mr. Tuttle: Now, this deposition from which I have read on several occasions with the green backing here was taken in connection with the American Medical Association's lawsuit.

The Court: Oh. [995]

(Testimony of Miles H. Robinson.)

Mr. Tuttle: And was taken in Chicago in September of 1955.

The Court: I see, all right. This is a later deposition that you have now?

Mr. Tuttle: This deposition, yes, this is in Volume 3 I was just reading, which was taken in January of this year when we completed taking of his deposition.

Q. So that you don't know whether or not the incident that you related to us here concerning Dr. Pratt's displeasure with you about having been offered the position of health officer ahead of him was prior to this August, 1950, date or not?

A. Well, as I think of it, I believe it was.

Q. All right. If it was, can you tell us about it?

A. Oh, I was acting as a kind of third assistant to an operation in St. Mary's with Dr. Campbell and Dr. Pratt and when we left the operating room Dr. Pratt made a remark to me and Dr. Campbell, something about youth replacing age, and he was referring to the fact that I had assisted Dr. Campbell and him, and I don't remember what else he said, but what he meant was that he thought he was not going to assist Dr. Campbell any more and that I would come in and assist Dr. Campbell in his place, and I really didn't pay any attention to the thing at the time at all. I was surprised that he would [996] say this because he said it in such an emotional manner, and, he, being so much older and almost ready to retire himself, I just didn't really see the point of it.

(Testimony of Miles H. Robinson.)

But since that time, thinking of the other things Dr. Pratt has done, why, that little incident back there, which I thought was rather childish and really uncalled for since I hadn't really replaced Dr. Pratt in any way, didn't want to replace him, looking back on it, I thought it showed a kind of resentment that he had against me.

Q. That was all a matter of looking back on things, wasn't it, Doctor; looking at it as of August, 1950, Dr. Pratt had always exhibited, as you looked at it then, a friendly interest in you, hadn't he?

A. Well, I don't think I could say that.

Q. You can't? Tell me why.

A. Well, for one thing, he never sent me any patients. He purported to be a great friend of mine, but I never got any patients from him and it is customary for older men who are about to retire and who claim to be a great friend of yours to send you a patient once in awhile, once a month, maybe, just somebody that when you are too busy yourself. I didn't resent it, that he didn't send me any, but I could see that his friendship was not very deep.

Q. Well, isn't that looking back on it, rather than looking [997] at it from August, 1950? There wasn't anything in your relationship as of August, 1950, to indicate to you that Dr. Pratt was in any way unfriendly toward you, was there?

A. Well, there are all degrees of friendship. I was just stating that I didn't feel that he was any great friend of mine, which I thought that was what your question was trying to bring out.

(Testimony of Miles H. Robinson.)

Q. You just felt he wasn't any great friend of yours, but I am asking you if you felt that he was in any way unfriendly toward you as of August, 1950?

A. Well, I would agree to that; I had no reason to think he was unfriendly to me.

Q. Now, the Public Health Office situation that I mentioned to you a moment ago occurred prior to the time you went into Dr. Campbell's office, didn't it?

A. Yes, yes; it did. At least, I think so, because I was much too busy after I got in Dr. Campbell's office to even consider the idea of taking Dr. Sharp's place as Public Health Officer.

Q. Well, tell us about that, if you will, please.

A. I looked up a note—oh, I keep a kind of a diary, put down little things, and especially after all this trouble started, and did you want what happened to the health thing or did you want when he showed his reaction to it [998] at a later time?

Q. Well, what his reactions were? These were previous.

A. Well, I suppose—well, he resented the fact that the post of temporary Public Health Officer in Walla Walla had been offered to me before it had been offered to him.

Q. On what do you base resentment at that time?

A. Well, I told him in a conversation with him, I just happened to mention casually, and I had this conversation on the 13th of October—the reason I remember is because that was the conversa-

(Testimony of Miles H. Robinson.)

tion when he told me that if I would stop my opposition to the secret committee, that this society would not push this man Brooks to carry out this or to continue his complaint against me. I remember that conversation, that was on Friday the 13th, October the 13th, and we had quite a long talk that day and I just casually mentioned to him that Dr. Sharp had offered me this job as temporary Health Officer, and that was months before that he had offered that to me, and when I told him that, I was really astonished at his reaction. He jumped back in his chair and he kind of glared at me. I was tremendously taken aback, I was really startled, and I just told him this in the most casual way possible, and I knew that he had taken the job himself later, but he acted like he highly resented [999] the fact that it had been offered to me first.

Now, that and that business in the hospital about that operation were the two very odd things about my relationship with Dr. Pratt which just didn't fit the picture of his fatherly interest, which he kind of put on when I would see him.

Q. Now, you say that conversation when you told him casually that you had been offered that position ahead of him took place on October the 13th, 1950?

A. Yes. I remember that date.

Q. How do you remember that so well, Doctor?

A. Because it was Friday the 13th.

Q. Well, should there be any relationship be-

(Testimony of Miles H. Robinson.)

tween Friday the 13th and your telling him that the job had been offered to you ahead of him?

A. Oh, I doubt it.

Q. But, still, you remember that as being the occasion?

A. Well, yes, but, of course, you realize that those dates are all fixed from the fact I have had to go over these dates with my lawyers and what not and study them and prepare copies, and, you see, that was just two days after Brooks made his complaint to the society on October the 11th, which I am not likely to forget.

Q. But that isn't the day that you talked with him about the health office situation, is it? [1000]

A. Yes, it is.

The Court: You mean the 13th, not the 11th?

A. The 13th, I beg your pardon, the 13th. Of course, I wasn't present at the October 11th meeting, knew nothing about it for a solid month.

Q. (By Mr. Tuttle): Well, I am confused on the dates here. I am going to read you some testimony here and see what you say about it. You were saying here, Page 330 of the Walla Walla deposition, that:

“Dr. Pratt called me into his office and said Tom Brooks had signed affidavits alleging certain complaints against me and that he would sue me unless I would stop campaigning against the secret grievance committee.

“Q. That Brooks would sue you unless you

(Testimony of Miles H. Robinson.)

stopped campaigning against the secret grievance committee?

“A. Yes, and he said further that the society would assist Brooks in doing that and in making as much trouble for me as they could unless I stopped campaigning against the secret grievance committee.

“Q. What was your reply to that? I mean, you had something more than just that. Tell me, if you can in substance, what the [1001] conversation was that took place between you and the doctor; that is, did you sit down and have a heart-to-heart talk about these matters that extended over a period of time, or did he make these statements and you walk out of the room? Tell me the conversation that took place.

“A. My reply to his remarks, which I have just given, was that I had done nothing wrong to Brooks, I had no concern whatever on a lawsuit from Brooks, and that the society was entirely wrong in what it had done, and, well, that was about the substance of it, as I recall.

“Q. Do you remember when that conversation took place?

“A. Yes, I do, it was on or about October the 13, 1950.

“Q. On or about October the 13th, 1950?

“A. Yes. The reason I remember was because it was Friday the 13th.

“Q. Friday the 13th. How did you happen to

(Testimony of Miles H. Robinson.)

identify Friday the 13th with the Dr. Pratt conversation?

“A. Well, there is an old superstition you [1002] may have heard about Friday the 13th being a day when calamity might occur. I wasn't sure who was going to suffer a calamity, but I remember on Friday the 13th.

“Q. You had officed in offices which adjoined Dr. Pratt in the Drumbheller Building, had you not, Dr. Robinson? A. Yes.

“Q. You had them at that time, and for how long had you been there?

“A. Well, ever since I took over Dr. Campbell's practice.

“Q. Can we say you were well acquainted with Dr. Pratt? A. Yes.

“Q. Would you refer patients to him and he to you when you would be out of your offices or unable to attend a patient?

“A. I think he referred two patients to me in all the time I have been in Walla Walla.

“Q. Had your relationships with Dr. Pratt been friendly? A. Well, yes, I would say so.

“Q. Had he taken an interest in your practice of medicine as a young doctor in town, as an older doctor might under those circumstances?

“A. Well, he was one of the two men who [1003] sponsored my membership in the society, but I wouldn't say that he took an interest in helping me to start out otherwise.

“Q. You have never had any other conversations

(Testimony of Miles H. Robinson.)

with him about the practice of medicine or visiting back and forth in a friendly way about your mutual medical problems?

A. No, nothing in particular.

“Q. And there was nothing in your relationship with Dr. Pratt until that moment which had ever given you reason to think you weren’t on friendly terms with him?

“A. Well, there were two things that bothered Dr. Pratt a great deal that had happened previously.

“Q. What were those?

“A. Well, one of them was I was offered the position of County Health Officer by the County Health Officer for a period when he was going back East to get his degree in public health.

“Q. Dr. Sharp?

“A. Dr. Sharp. And Dr. Pratt was also offered that position, and when he found out that I was offered it before he was, why, his [1004] attitude and manner, he seemed very annoyed and resentful.

“Q. And you had a discussion about it, did you?

“A. No discussion, I was just disconcerted that such a thing would bother him.

“Q. Did anybody else tell you he was bothered?

“A. Oh, no; he just seemed very annoyed at the time.

“Q. Nobody told you that he had told that?

“A. I have just told you nobody told me.

“Q. Did anybody tell you Dr. Pratt had been

(Testimony of Miles H. Robinson.)

informed you had been offered the position ahead of him?

“A. Why, I told Dr. Pratt that fact and that is——

“Q. (Interposing): How did you happen to tell him that?

“A. Just in the course of idle conversation.

“Q. And you told him you had been offered the position ahead of him?

“A. No, I said I had been offered the position and he eventually took the position, you see, because I turned it down, and I believe it was after he took the position that I told him that. [1005]

“Q. How did you happen to tell him you had been offered the position?

“A. I just told him just in idle conversation.

“Q. Did he say anything at all?

“A. I believe he did.

“Q. Can you tell us what it was he said?

“A. I can only give his general reaction, which I have already mentioned, that he seemed very annoyed to learn this fact that I had this job offered to me before him.

“Q. By anything he said? A. Yes.

“Q. But you can't tell me all that he said?

“A. It was quite awhile ago, you know, and you remember what a man's attitude was. That can be expressed by his facial expression and whatever words he said and perhaps words he didn't say.

“Q. Do you remember when that was?

“A. No, I don't recall exactly when that was,

(Testimony of Miles H. Robinson.)

but it was before all this trouble. It made no impression on me at the time except I was a little surprised that an [1006] older man who pretended to take an interest in my career would exhibit jealousy over such a trivial matter.

“Q. You say he had been taking an interest in your career? In what way?

“A. He had, as I say, pretended to take an interest.

“Q. Did this pretension evidence to you he was taking a fatherly interest in the medical career of a young doctor coming into town?

“A. Well, you see, Dr. Campbell really sponsored me in the society, but the application blank requires two names and Dr. Pratt was the man that worked with Dr. Campbell on everything, so that is how Dr. Pratt principally signed the application, as I understand it, and Dr. Pratt always evinced the kind of fatherly interest, but I couldn't help noticing he never sent me any patients, but that didn't bother me but is the basis for my statement that I think a lot of his interest was kind of a pretense, especially in view of subsequent events that took place. [1007]

“Q. In view of those events, you now think he was pretending to evince fatherly interest in you?

“A. No, you are twisting my statement; I said especially in view of subsequent events. In other words, previous events and subsequent events, both of them, contribute to my impression that he was putting on a pretense.

(Testimony of Miles H. Robinson.)

“Q. How early did you receive the impression it was a pretense?

“A. Well, I have already told you.

“Q. Well, was it as early as the time he sponsored you by signing your application?

“A. I hardly knew the man then. I am speaking of the fact that he never sent me any patients, and I should say in passing that the older men who are friendly to younger men always have a few patients that they would just as soon not bother with for a variety of reasons, and Dr. Campbell sent me a lot of patients of that sort.

“Q. Were there other doctors in town who were sending a lot of patients after Dr. Campbell [1008] left?

“A. I would say that I was sent patients by many doctors much more than Pratt ever sent me.

“Q. Who would those doctors be?

“A. Oh, I had patients from Dr. Moore, from Dr. Keyes, from Dr. Bohlman, from Dr. Cranor. I would say a third or half of the members of the society at one time or another sent me a few patients, just as I sent them patients.

“Q. And you felt, then, that practically all the other members of the society were evincing more friendly interest in your career than Dr. Pratt?

“A. Well, you know, actions speak louder than words, yes, that's right.

“Q. What was the basis, would you say, of Dr. Pratt's unfriendly attitude evinced by not sending you patients as some of the other doctors did?

“A. That is something I could never figure out.

(Testimony of Miles H. Robinson.)

“Q. Did you give it some thought at the time?”

“A. Oh, I wondered at times, but I was too busy to worry about his feelings or [1009] motives.

“Q. Could it have been that he knew how busy you were and he wasn’t going to overload you with more work than you could take care of?”

“A. I wasn’t that busy.” [1010]

* * *

Q. With that lengthy recitation in mind from the deposition, Doctor, to refresh your recollection with reference to when your conversation with Dr. Pratt concerning the health office matter took place——

A. Well, that is really a very simple situation. The incident about the health officer took place before all this trouble started. The conversation at which Dr. Pratt and I discussed it, or really I just mentioned it and he reacted, when I gave that answer on the deposition I really couldn’t remember when the conversation took place, but a few days ago I was looking through all my notes and I was rather surprised myself to discover that my notes show that this conversation about the health officer business took place on this same Friday the 13th when we talked about much more important matters.

Q. So that, then, you wish to change the testimony which you [1011] gave in your deposition now and say that that conversation also took place——

Mr. Mc Nichols: I object to the remarks of

(Testimony of Miles H. Robinson.)

counsel. You haven't established where he changed any testimony.

Mr. Tuttle: He just said he corrected it. I assumed he was correcting his testimony, Bob.

Mr. Mc Nichols: No——

Q. (By Mr. Tuttle): Maybe I am confused. Didn't you say that you had just went through your notes and found out it took place then?

A. I found out the exact date when I had that conversation.

The Court: At the time of the deposition, you didn't know the exact date, is that it?

A. No, sir; I didn't, no.

The Court: That is what he testified.

Q. (By Mr. Tuttle): You had testified that it had taken place previously.

So then it is your testimony that as of August, 1950, there was no reason for you to think that Dr. Pratt had been unfriendly in any way to you.

A. What was that again?

Q. I am just asking you now if as of August, 1950, when you resigned from the bureau, you didn't at that time think of anything that Dr. Pratt had evidenced unfriendliness toward you? [1012]

A. At that time I had nothing on my mind about any lack of friendliness on the part of Dr. Pratt.

Q. Now, you mentioned Dr. Moore, Mr. Fullerton, Dr. Pratt; were there any other doctors that at the time you were resigning from the bureau evidenced resentment toward you or enmity in any way?

(Testimony of Miles H. Robinson.)

A. Well, now, I don't believe I have said that any doctors prior to my resignation——

Q. Well, I am saying at that time, Doctor?

A. Well, it all developed after that time.

Q. Yes. Well, I am speaking broadly from the time you resigned from the bureau and, we'll say, up until October, were there other doctors who had evidenced resentment toward you in any way?

A. Well, I don't recall anything else.

Q. There hadn't been any other letters to you or anything of that nature?

A. Well, I don't think of anything.

Q. Now, you have mentioned this letter of the bureau to Mrs. Phillips declining to pay a \$17.00 bill of yours, and I believe that is August the 23rd, 1950, the date of that letter? A. Yes.

Q. Did that letter come as a surprise to you?

A. Yes, it did. [1013]

Q. And you have marked that as, I believe, one of the first overt acts of conspiracy toward you?

A. Well, looking back on it, I would. At the time, the thought of conspiracy didn't even enter my head. The word, I did not even think of the word.

Q. Did you feel that was a malicious act on the part of the bureau, or they were acting in good faith in turning that down?

A. Oh, I felt it was malicious.

The Court: Is that letter in evidence?

Mr. Tuttle: Exhibit 9.

(Testimony of Miles H. Robinson.)

The Court: Yes, all right, I just wanted to know. Go ahead. Yes, I remember it now.

Q. (By Mr. Tuttle): Had you had any discussion with the bureau at all about that matter, or did this come as a shock to you when you got that letter?

A. I had had no discussion prior to receiving that letter on the subject of the letter.

Q. Doctor, I am referring to a letter of yours of May 27, 1952, to George F. Lull, M.D., Secretary of the Judicial Council of the American Medical Association, which has an enclosure contained. Do you recognize that?

Mr. Sembower: What exhibit is that, Mr. Tuttle?

Mr. Tuttle: That has not been listed among the pretrial exhibits, Mr. Sembower. [1014]

Mr. Kimball: It was marked in connection with your Chicago deposition in this case.

Mr. Mc Nichols: May we examine that, Mr. Tuttle?

Mr. Tuttle: Yes, sure.

(Document handed to counsel.)

Do you have any objection to this being offered as an exhibit?

Mr. Mc Nichols: We haven't had time to look it over.

Mr. Sembower: We haven't had a chance to look it over.

(Testimony of Miles H. Robinson.)

The Court: You can have it marked if you are going to use it for cross-examination.

Mr. Sembower: I would like to reserve objections to it.

The Court: Yes.

The Clerk: That will be Defendants' Exhibit 509.

Mr. Sembower: I think everything there is something we have seen before but in other connections. I just don't know how it fits here.

Mr. Kimball: May I say, your Honor, that that was marked as a part of the plaintiff's deposition taken in this case, which I presume is before the Court, and not only seen but was introduced.

Mr. Mc Nichols: Produced by who? [1015]

Mr. Kimball: By you.

Mr. Mc Nichols: We are speaking personally. We hadn't seen it.

Mr. Kimball: I meant the plaintiff.

Q. (By Mr. Tuttle): Well, Doctor, I am showing you Defendants' Exhibit 509 for identification and ask you if that is a letter written by you to Dr. Lull? A. Yes.

Q. And does that enclose some other documents?

A. Yes.

Q. And will you tell us what the enclosure is?

A. Well, it is a copy of a talk I gave before the Judicial Council at the time of the hearing of my appeal December 2, 1951.

Q. And does that appear to be a correct copy of it?

(Testimony of Miles H. Robinson.)

A. Yes. Wait a minute, I only see one page. No, that is all right, the two pages are there.

Q. Now, it is your testimony that on August the 11th you wrote your letter stating the reasons why you expected to resign from the bureau, correct?

A. Yes.

Q. And on August the 17th you wrote your letter resigning from the bureau, and on August the 23rd, was it, the Phillips letter was written?

A. Yes. [1016]

Q. And you have stated that you felt that was a malicious act and that came to you as a surprise, it was the first notice that the bureau had given you that your fees were not going to be paid in connection with that case?

A. Well, that letter was the first indication of any objection to my bill on Mrs. Phillips.

Q. I see. Now, that was the first indication, then, that the bureau objected to the payment of that bill in any way? A. Pardon?

Q. That was the first indication by the bureau that they objected to the payment of that bill and weren't going to pay it?

A. Well, so far as I can remember, and I'm just sure that that was the first idea that I had they were not going to pay that bill, because I was really startled when I got the letter.

Q. Well, now, in this enclosure from the eight minute speech before the Judicial Council in Los Angeles on December the 2nd, 1951, on page 2 of

(Testimony of Miles H. Robinson.)

that enclosure, Doctor, the first paragraph on that page says this:

“The precipitating factor in my resignation from the Medical Bureau was its refusal to pay for \$17.00 worth of urinalysis and urine cultures which I performed in my office on a [1017] Bureau patient in connection with my diagnosis, treatment, and my cure of this patient.”

Would you like to read that?

A. What was your question?

Q. Well, my question was whether or not you made that statment that that was the precipitating factor in your resignation from the bureau?

A. Oh, yes, I made that statement.

Q. Well, how could it have been the precipitating factor in the resignation if you had resigned on August the 17th and this letter to Mrs. Phillips from the bureau dated August the 23rd was the first evidence you had had of any objection on the part of the bureau to the payment of your fee?

A. Yes, there is an inconsistency there. [1018]

* * *

The Witness: I would like an opportunity to explain that inconsistency, if I may have it.

Q. (By Mr. Tuttle): That's right, I was going to ask, Doctor, how you explained it, if you please? Go ahead.

A. Oh. You are quite right, the statement says there that a precipitating factor in my resignation from the bureau [1022] was this letter about Phil-

(Testimony of Miles H. Robinson.)

lips and the resignation did occur on the 16th or 17th of August and the letter to Phillips occurred on the 23rd, later, so that statement couldn't possibly be true.

And I will tell you what happened. I wrote that little talk in the Pullman car going to Los Angeles and I think I still have my rough notes——

Q. Like Lincoln's Gettysburg Address?

A. Well, I wrote it down and I just wrote it out of my head without consulting any documents or anything and later typed it up out of my handwritten notes, and that is a clear mistake there and that is how it happened. The reason that I resigned from the bureau is entirely set forth in my letter of August the 11th in great detail, and after I resigned I got this Phillips letter, which startled me, but it is perfectly true that the Phillips letter had nothing to do with my resigning from the bureau.

But in my mind at the time, I had all those things together, because, you see, this happened in August—let's see—yes, August of 1950, and I was on the Pullman car in December or the last part of November of 1951, over a year later.

Q. But you did send that to Dr. Lull, did you not?

A. Well, I made that talk before the Judicial Council of the [1023] AMA in Los Angeles and I made a copy of the talk, and when I was trying to send Dr. Lull everything of this trouble, I sent him a copy of the talk, but I can tell you entirely

(Testimony of Miles H. Robinson.)

frankly that I at that time in no way noticed that there was a discrepancy of five days there as to the resignation time and the Phillips letter time, so it was absolutely an unintentional mistake

Q. Do you think you didn't make that statement in your talk, you think it was just a typographical error later when you were typing your notes?

A. No, no, I must have made the statement in my talk, because that faithfully reflects my notes of what I said to the AMA, and it is obviously an incorrect statement. But I doubt—I haven't had a chance to think it over as to whether there is any significance to it or not. I don't believe [1024] there is.

* * *

J. MARK ROBINSON

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. J. Mark Robinson.

Q. Where do you reside, Mr. Robinson?

A. Tunkhannock, R.D. 5, Pennsylvania.

Q. And what is your occupation?

A. Farmer.

Q. Are you related to the plaintiff, Dr. Miles H. Robinson?

A. I am his brother.

(Testimony of J. Mark Robinson.)

Q. Are you also a brother of Walter H. Robinson?
A. Yes.

Q. And where does he reside, if you know?

A. Vancouver, Washington.

Q. What was the name of your father, Mr. Robinson?
A. Louis N. Robinson.

Q. Was he a medical doctor?

A. Doctor of Philosophy, economics.

Q. Is he still living? A. No.

Q. When did he die, if you recall? [1027]

A. November 25, 1952.

Q. Mr. Robinson, of whom does the immediate family consist, that is, the brothers and sisters in your family?

A. Well, there are six children, my brother Walter, my brother Miles, my sisters Alice and Christine, I am the fifth, and my brother Thatcher the sixth.

Mr. Sembower: I have Plaintiff's Exhibit 268, purporting to be the last will and testament of Louis N. Robinson—

The Court: What was that number?

The Clerk: 268.

Mr. Sembower: 268.

The Court: Oh.

Mr. Sembower: And ask that it be admitted at this time. It is a certified copy of the will.

The Court: Any objection, gentlemen?

Mr. Kimball: No objection.

The Court: It will be admitted, then.

(Testimony of J. Mark Robinson.)

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 268.)

Q. (By Mr. Sembower): Are you the J. Mark Robinson who is named co-executor with Walter H. Robinson of the last will and testament of Louis N. Robinson? A. I am. [1028]

Q. Plaintiff's Exhibit 268. I show you Plaintiff's Exhibit 114, which has been admitted in evidence. This exhibit is a letter written by Dr. Wallace A. Pratt to Dr. Louis N. Robinson, dated May 24th, 1951, and I ask you, Mr. Robinson, if you recognize the handwriting in the notations in the upper right-hand corner of this letter? A. Yes, I do.

Q. What are they, if you recall?

A. They are my notes of a conversation with my father when he showed me the letter.

Q. Written in your own handwriting?

A. That's right.

Q. What are the words that appear there?

A. "Dr. Campbell," whom I believe refers to the man who gave Miles his practice; "Dr. Johlin," which is Miles' father-in-law; "Sally," which is the sister-in-law. The other word, that is, "Loessel," that is Sally's married name.

Q. What was the occasion of your writing those names on this letter, if you recall?

A. Well, it was shortly after receiving this, my father got it, I don't know how he got in touch with me, anyway, he discussed it with me.

(Testimony of J. Mark Robinson.)

Mr. Kimball: If the Court please, I think maybe this is hearsay evidence.

The Court: Well, I think he can show it was discussed. [1029]

Mr. Sembower: Yes.

Q. You did have a conversation with your father after receipt of this letter?

A. Several discussions.

Q. And then there was a discussion at that conversation of the letter? A. Yes.

Q. And then following one of those discussions, these names were written here?

A. I think that was during the first.

Q. What were the names, what do the names represent?

A. Well, my father wanted to make some inquiry——

Mr. Kimball: If the Court please, I object to his stating what his father said.

A. All right, I will try to skip it. The question is what——

Q. (By Mr. Sembower): Yes, I wanted to know what these names represented here.

A. They are the names of Miles' wife's family and the only other person that my father and I knew of in Walla Walla. They are other people that we knew.

Q. That you knew of in Walla Walla?

A. Yes.

Q. And the only persons in Walla Walla that you knew of at the time? A. Yes. [1030]

(Testimony of J. Mark Robinson.)

Q. I show you Plaintiff's Exhibit 120, which has been admitted, which is a telegram from J. Mark Robinson to Miles H. Robinson. Where was your father living at the time that he received the letter from Dr. Pratt, if you recall?

A. His residence was near Philadelphia, but at this time he was in his summer cottage which was adjoining my farm in northeastern Pennsylvania.

Q. Did you know the condition of your father's health at this time?

A. I was very familiar with it as when with somebody in your family. I am not a doctor.

Q. And what was his health at the time?

A. He had had a slight stroke and a slight heart attack and he was on a restricted regime. He was ordered to take it a little easy.

Q. What was the condition of his mental health, if you know?

A. My father was very sharp to the day he died.

Q. When did he die, Mr. Robinson?

A. November 25th, '52. He was mounting his horse when he had a fatal cerebral hemorrhage.

Q. Is that so? Did he retain his business connections during this period?

A. Up until the day of his death, yes.

Q. Did you know at this time who Dr. Pratt was? [1031]

A. No, sir.

Q. Did your father indicate any recollection of Dr. Pratt?

A. Not that I recall. [1032]

(Testimony of J. Mark Robinson.)

Q. (By Mr. Sembower): Did you observe the condition of your father's health after the receipt of the letter from Dr. Pratt?

A. Yes, as a lay person.

Q. And what did you observe?

A. I was concerned about it.

Q. Why were you concerned, the observations that you made which caused that concern?

A. He was agitated.

Q. Was he able to travel at this time?

A. He didn't feel able to go to the West Coast.

Q. Why did you send the telegram to Miles, that is, Plaintiff's Exhibit 120, Mr. Robinson?

A. My father wanted to see Miles. [1033]

Q. And that was the reason you sent the telegram? A. That's right.

Q. Did you send the telegram after the discussions to which you have testified took place with your father? A. Yes.

Q. To your knowledge, did anyone else in Walla Walla write your father about this matter?

A. Not to my knowledge.

Q. When and where, if you know, did the Pratt letter, so-called, come to light among your father's personal effects after his death?

A. I know quite well how that happened because I had the responsibilities of executor of disposing of his effects. My father maintained files all his life on all his correspondence, and that which concerned any child, for instance, mine, was filed under my

(Testimony of J. Mark Robinson.)

name, as Miles' was filed under his name, and the executor had to make some decisions what to do with these voluminous files, and as far as those referring to any one of the children, each file was given to the child concerned, so that I got my file, Miles got his file.

Q. And where, to your knowledge, was the Pratt letter located?

A. Well, it must have been in Miles' file. In fact, I know it was. By Miles' father, I mean my father's file with [1034] Miles' name on it.

Q. I see. Referring to the deposition in this case taken of Wallace A. Pratt, I find on page 38, line 24, the answer given by the defendant Dr. Pratt to a question presented on cross-examination by Mr. Rosling, and he states—well, let's see, in order to give a little setting for this:

“Q. In your testimony, Dr. Pratt, you referred to the fact that Dr. Miles Robinson had been in trouble at various times throughout his career. In your conversations with any of the members of his family, have you been advised of any incidents or character traits of his boyhood years?”

A. Well, of course, I only talked with his brother. The brother said that he had had.

Q. In that he—

A. That Miles had been temperamental or something of that sort and even as a boy, he had tantrums and he said they had to put him in a strait jacket, he was so uncontrollable. I remember that distinctly, his brother telling me that.”

(Testimony of J. Mark Robinson.)

Q. Mr. Robinson, do you remember any incidents of Miles' childhood or the time that he lived with the family to which that might refer? [1035]

A. I have no such recollection.

Q. You were raised with Miles, were you?

A. We were a big family, yes.

Q. And was Miles given to tantrums?

A. I wouldn't say nothing ever happened any more than any other child, anything abnormal, no, definitely no.

Q. Dr. Pratt also refers in his deposition to stormy periods.

The Court: Did Dr. Pratt say what brother had told him that?

Mr. Sembower: He is referring here to Walter.

The Court: To Walter, I see.

Mr. Sembower: Yes, but I thought we would ask this witness while he was available if he remembered any incidents relative to that that might form the basis for that.

Q. Dr. Pratt refers in his deposition to stormy periods in Miles' life. Do you know to what that could refer? A. No.

Q. Of your own personal knowledge, do you know of Miles having stormy periods in his life?

A. No.

Q. Mr. Robinson, did your father attach a codicil to his will? A. Yes.

Q. When did he attach that, if you [1036] recall? A. Which codicil do you refer to?

Q. The codicil relating to Miles Robinson.

(Testimony of J. Mark Robinson.)

Mr. Kimball: If the Court please, I believe the will would be the best evidence of the question being asked. A. May I see the will?

Mr. Sembower: Yes.

The Court: The codicil is attached to the will?

A. Yes, sir.

Mr. Sembower: The codicil is attached to the will.

A. The first codicil was executed the 28th of June, 1951.

Q. I believe you testified, Mr. Robinson, that you were very close to your father at this time?

A. I was the oldest son in the east and he was living adjoining my farm and we have always been close.

Q. And at this time, were you closely and intimately acquainted with his business relations, relations with the family, and so on?

A. My father had been in failing health and, although his judgment remained unimpaired, his strength was limited, and I performed considerable services at one time or another in his office for him. I helped him fill his income tax out, that sort of thing.

Q. Do you know of any circumstances whatsoever other than the Pratt letter which caused your father to add this codicil? A. No. [1037]

Q. Referring to Plaintiff's Exhibit 198, which is a photostatic copy of a letter from Wallace A. Pratt, dated April 9, 1952, found among the papers

(Testimony of J. Mark Robinson.)

subpoenaed from the American Medical Association files, I find here the statement:

“This is to certify that I have known Dr. Miles Robinson well and his family for over ten years, and at the request of the officers of the medical society, conferred with him at least three times with a view to resolving the matters in dispute.”

To your knowledge, Mr. Robinson, was Dr. Pratt well known to Miles' family over a ten year period?

A. I can only speak for the part in the east. I don't think we had ever heard of him. I know I hadn't, I never had heard of him.

Q. To your knowledge, did any of the members of the family, in the East know him over a ten year period?

A. Well, that was impossible, because we have never met him, with the exception my father may have met him once, possibly, here.

Q. Mr. Robinson, does Miles presently hold a responsible position in connection with the family savings corporation, of which you are a member?

A. Yes. [1038]

Q. What is that position?

A. Well, Miles is a director of this corporation, he is assistant secretary-treasurer.

Q. When was he chosen for it?

A. Well, I should know very well since I manage it. It was about two years ago and I think he has been re-elected once.

Q. And what are his duties in connection therewith?

(Testimony of J. Mark Robinson.)

A. Well, the major problem, of course, with anyone with savings is how to invest them, and that is what we spend most of our time worrying about, and beyond that, he is assistant secretary-treasurer. He signs checks in my place, in my absence, and, as any one of the directors—you see, I bear the major responsibility. So the family could relieve me of some of that, I can't sign checks at all and I can't get in the safety deposit box on my own, it takes two people. Miles can get in the box; I can get in the box with Miles' help.

Q. And who are members of that group?

A. Well, the directors were a smaller group than the members. Which do you refer to?

Q. Well, both of them?

A. Well, the members consist of about 35 people. I am a member of a large family, cousins, and so on.

Q. And these persons all participate in these activities? [1038-A] A. Yes.

Q. And how was Miles chosen for this work, to work with you and sign checks and so on?

A. Well, when he returned to the East he became available. He wasn't an officer, he was a member, but he was not an officer, living in the West. When he returned to the East he was available to help us and we have always asked him to help us. We valued his opinions, and so on.

Q. Go right ahead.

A. Well, we feel he has something to contribute

(Testimony of J. Mark Robinson.)

or we wouldn't have asked him. He has no large holding in it, as I don't.

Q. But the members of the family had confidence in him for this position, to your knowledge?

A. Yes, sir.

Mr. Sembower: I think that is all.

Cross-Examination

By Mr. Kimball:

Q. Mr. Robinson, what is your age?

A. You probably think it is silly, I have to figure. I was born in 1919 and I haven't had a birthday yet, so I am 36.

Q. And how old is your brother Miles?

A. My brother Miles? Well, I would say my brother Miles is about five years older than I am. I don't know how close I am.

Q. Would you put his age, then—would you specify his age, actually, of Miles?

A. No, I said he is about five years older than I am, six, something like that.

Q. Then Miles was eight years old when you were three years old?

A. If my calculations are correct. I don't know, I am not prepared to answer the question. I couldn't even tell you my own age. [1040]

* * *

MILES H. ROBINSON

plaintiff herein, having previously been duly sworn, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Tuttle:

Q. Dr. Robinson, what was the date that you first saw Mrs. Brooks?

A. Well, it was about the middle of February, 1950.

Q. She had been a patient of Dr. Campbell's office, had she? A. Yes.

Q. And I believe you testified that Dr. Campbell introduced Mrs. Brooks to you as a mysterious neurological case, wasn't that the term you used?

A. introduced her to me, yes. You could say, as a mysterious neurological case.

Q. And do you know how long Dr. Campbell had been looking into the matter of her difficulties?

A. I couldn't tell you right from here, but my case records may show that. It was some time.

Q. You mean by some time, a period of days or weeks that he had been treating her?

A. I was under the impression that he had had charge of her case for several months.

Q. Several months?

A. Yes. Perhaps longer. He may have been seeing her since [1041] she got here in this country, because I know he knew the family. Well, quite some time.

(Testimony of Miles H. Robinson.)

Q. Did you examine his records at the time you took over her case?

A. Dr. Campbell kept practically no records on patients. He had a prodigious memory and he had everything in his head.

Q. Well, did you discuss with Dr. Campbell what he had done in the way of looking for symptoms of her disease, what tests he might have made on her, and so on?

A. Oh, I am sure I did. I routinely discussed that with him on any patient that he turned over to me.

Q. Do you recall what he had told you that he had done, what his tentative findings might have been?

A. I don't exactly, no. I don't have any definite recollection. I can only say that I would have asked him routine questions about it. I don't remember what he said except that she had some obscure malady.

Q. Do you know whether or not he had done any blood tests on her?

A. Yes, I know that, he had not.

Q. He had not done any? A. Yes.

Q. Blood tests? A. That's right. [1042]

Q. Nor any spinal fluid tests on her?

A. I am quite certain he hadn't, he had done no spinal tests on her, because I know he would have told me if he had and would have told me the results.

(Testimony of Miles H. Robinson.)

Q. Such records as Dr. Campbell might have had on her case, are they in your possession?

A. What Dr. Campbell kept, he kept—his laboratory assistant kept a record of any injections that were given to patients and of any lab work done in the office. She kept all that. He also had a flock of little cards on his obstetrical patients noting when they were likely to have their babies. And the only other thing he had—well, he had two other things—he kept letters of other doctors who wrote him about patients in case there was a referral for a consultation, and then he had a great file of X-ray films on patients.

Q. And do you have custody of all those records now, or did Dr. Campbell retain his own records?

A. The X-ray films were largely destroyed because they were no use to me. I kept a few of the laboratory reports of injections on different patients where it seemed likely they would be useful, and I either didn't get anything else or I didn't keep anything else.

Q. In other words, you don't think that you have in your custody any of Dr. Campbell's records on Mrs. Brooks? [1043]

A. Well, I am quite sure I do not. I haven't looked at that file just lately. There weren't any records on her.

Q. Now, can you refer to your memory on these matters, or would it be better while we are discussing her case if you had the exhibit, her case record? Would that be helpful to have that?

(Testimony of Miles H. Robinson.)

A. Well, I would have to have her case record if I were to discuss her case.

Mr. Tuttle: Do you know which one that is, Tom?

The Clerk: What is the name? What patient?

Mr. Tuttle: It would be Mrs. Tom Brooks.

Mr. Rosling: 270.

Mr. Tuttle: I think you also better give me the file of Tom Brooks.

Q. Didn't you say the other day, Doctor, that part of Mrs. Brooks' case records were in the Tom Brooks' file?

A. Some of the lab work were in the other file.

Q. I hand you Plaintiff's Exhibits numbers 269 and 270 for your use in connection with these questions, Doctor.

Can you tell us now what date it was that you first saw Mrs. Brooks? A. Mrs. Brooks?

The Court: Mrs. Brooks, was it, you said?

Mr. Tuttle: Mrs. Brooks, your Honor. [1044]

The Court: Mrs., oh.

A. I couldn't tell you exactly from these case records, because I did not make a notation the very first time I saw her, possibly. Now, I am not sure of that. The reason was that so many patients came in on me all at once there, that my record system on patients just broke down temporarily, and I was checking through the day sheets the other day and I wasn't quite clear whether I had seen her before I actually made a note on her. The record here on her shows February 9, 1950, but

(Testimony of Miles H. Robinson.)

the day sheets—well, I can fix it quite closely. The day sheets may show that I saw her in the preceding nine days, because I went into Dr. Campbell's office on February 1st, 1950, and the record shows I saw her on the 9th and I may have seen her a couple of days before that, and, as I often do, when you first see a patient if you don't think it is going to amount to anything, I do not open a file and open a record necessarily. But if the case develops and looks like it is going to be quite a problem, why, then, I start catching notes and I try to get back to the first day I saw her with my notes, but I don't always make it.

Q. Would you be able to tell by looking at the day sheets if you had seen her prior to that time?

A. Oh, yes; that is quite possible on the day sheet. [1045]

Mr. Tuttle: May I have Exhibit 292, please?

The Clerk: Has it been admitted?

The Court: It has been admitted, yes, 282.

Q. (By Mr. Tuttle): Doctor, can you tell from looking at these two exhibits here which one of these is the day sheets that you want to look at?

A. The ones in your right hand.

Q. Which will be exhibit, then, 303.

The Court: What is the number of this one?

Mr. Tuttle: This one is 303, your Honor.

The Court: 303, all right.

A. Yes, this seems to be quite definite here. February the 9th, 1950, Mrs. Brooks was seen by myself and Dr. Campbell together.

(Testimony of Miles H. Robinson.)

Q. So that that would have been the first time you saw her and would have been the date that Dr. Campbell introduced her as this mysterious neurological case; would that be correct? A. Yes.

Q. And what did you do on that day, what do your records reflect?

A. Well, the day sheets show that we took a white blood count and that she was given an injection. Then my notes on her, which I now see, I have made to show that I saw her on the 9th of February. Do you want me to read [1046] all my notes on her?

The Court: He asked you what you did on that date.

Q. (By Mr. Tuttle): Just tell us what you did on that date.

The Court: On the 9th of February.

A. Well, I remember that I examined her for probably forty-five minutes, perhaps a little longer, and I took a complete history of every conceivable thing that she could tell me or that I could ask about about her entire health, and then I went over her in an examination generally and with particular attention to this paralyzed left foot.

Q. (By Mr. Tuttle): Now, to start with, I think you mentioned she was given an injection on that date. Can you tell me what that injection was?

A. Yes, she was given two injections. The first thought, of course, was that she had osteomyelitis, which is an infection of the bone, because she had been examined by Dr. Platner. Let's see, where is

(Testimony of Miles H. Robinson.)

that? Yes, she had been to Dr. Platner and he took an X-ray of her and found deterioration of the hip socket on the left side, and my note shows here, "been to Dr. Platner, X-ray, who found deterioration of hip socket, but FM—" that is Dr. Campbell—"disagrees. FMC thinks—" I have here "left hip higher."

Of course, these notes were written in a big hurry, [1047] as I usually did, and what I think I meant was that he thought the trouble came from higher up than the left hip.

So in a case like that, you can't lose with penicillin, it can't hurt you, and it has a tremendous effect on an infinite number of conditions, so we just gave her some penicillin immediately and we also gave her an injection of reticulogen, which is a high potency liver extract and is a specific cure for neurological conditions of pernicious anemia type, which often show neurological signs exactly like Mrs. Brooks had.

Now, you asked me what I did. In addition to the history, I went all over her and examined her neurologically, of course, from head to foot.

Q. Does your record show when she had seen Dr. Platner?

A. No, they do not. I was looking to see whether we took a blood test that very day and I don't remember whether we did or not. My recollection is we did. Yes, we did, because the blood test here shows Walla Walla County Health Department, Lab. No. 490, name is Brooks, date obtained Febru-

(Testimony of Miles H. Robinson.)

ary 9, 1950, and stamped above that is February 14, 1950, which is the laboratory date when they did their work on it.

So my recollection is correct, I immediately suspected syphilis and took a routine [1048] Wasserman.

Q. Now, will you tell me what her medical history was, according to your recollection as you refresh it from your records?

A. Why, my notes here say "two years—leg." That just means that she has had trouble with that leg for two years that she knew about. She says here, or rather she told me, "Began after a bad fall two winters ago." She had always been in ill health, it says. She had had some trouble with her heart. she had had a backache, she had a very bad time sleeping, severe insomnia is what the note said. She had a right tube and ovary out in England, the tube being the little pipe connection between the ovary and the uterus. She had occasional urination, a history of infection of the urinary tract, which began after catheterization in the hospital when she had her operation. This condition was acute a year and a half ago.

Now, that is all that my notes show on that particular day.

Q. Well, now, what do your notes show with reference to your examination as to what your findings were, what your diagnosis was?

A. Well, let's see, physical examination. She had a drop of the left foot, mainly in the perineal group,

(Testimony of Miles H. Robinson.)

that is, it is the perineal muscles. They are the muscles that [1049] run down the outside of the leg which are responsible for this foot drop. She has no change in sensation. See, I went all over her with a pin from head to foot. The foot is cold to the touch. She has only very slight extensor power, the ability to lift the foot. Almost no response of any kind to the Babinski test, which is where you run a sharp tool up the outside of the foot and the big toe lifts automatically when the test is positive.

Her knee jerks, "KJ," that is where you tap right below the knee, are increased on the left, but they are exaggerated on both legs. The reflex of her biceps of the arm, they are about equal, and her hand power was equal, her muscular power. You take a hand of the patient in each of your hands and ask them to squeeze that and that tests the power in their arms.

Her pupils, however, react to light, which often is lost in the disease I suspected.

Now, that covers my notes at the time, but, of course, doesn't cover all that I did. I only tried to hit the high spots when I wrote this down.

Q. Do you remember other findings which you didn't write down?

A. Yes, I remember—you see, it is this way: When you examine the eyes, you have three things you do to the [1050] eyes. The question is whether the eyes react to light, whether they react to accommodation, and let's see, what was the other one? And the ocular movements, whether the eyeballs

(Testimony of Miles H. Robinson.)

swing around in a normal way, and, of course, if I had found anything positive in that, I would have written it down, but I noticed particularly that the pupils react, because one of the most subtle tests for syphilis is the failure of the pupil to dilate when you shine the flashlight in the eyes and that is due to neurosyphilis, so she didn't have that test positive.

Well, as far as any further recollection goes about her as of this time, she was walking with a cane, limping. Well, I couldn't tell you anything else at this time.

Q. Well, then, when was it that you made your diagnosis?

A. The diagnosis was made when the laboratory test came back positive.

Q. Can you tell us what date that was?

A. The test was taken on the 9th of February, yes, and my notes show on the 15th of February as follows: "Lab reports a positive on Brooks," and then I have "—no name on the lab slip." Now, that, how that happened, I don't know exactly. She was apparently the only test I made at that time and the secretary generally fills out [1051] those slips. I believe there was a little concern at the time about that.

The Court: This question was when he got the report back from the laboratory, wasn't it, the date? That is all he has asked you this time.

A. I beg your pardon.

The Court: Is what was the date you got the report back?

(Testimony of Miles H. Robinson.)

A. February the 15th, 1950.

Q. (By Mr. Tuttle): And you were just testifying that that report didn't bear any name, but you believe it was Mrs. Brooks' report, is that correct?

A. Oh, yes. Well, there was no question that it was her report, but somehow or other the girl apparently didn't put her name on it.

I just feel I should say that we, of course, checked it right away again and—wait a minute, wait a minute, now. It says here—well, I think what we did right away was we did another test right away for that very reason, because we have another test here dated May 15, 1950, which would be the day we got back the unnamed slip and that has happened before. And this new test was taken on May the 15th, 1950, and that has the name Brooks on it. I don't know——

The Court: The new test was February the 15th? [1052]

A. Yes, your Honor.

The Court: That is when the blood sample was taken?

A. Yes, another test.

Q. (By Mr. Tuttle): I think you referred to May 15th when the other test was taken.

The Court: You misspoke when you said May 15th, didn't you?

Mr. Tuttle: I don't believe so. I think his record shows he took one on the 15th of May.

(Testimony of Miles H. Robinson.)

The Court: Oh. Well, I just thought he meant February 15th. Go ahead.

A. Well, the first blood was taken February the 9th, 1950.

Mr. Tuttle: Yes.

The Court: Yes, I understand that.

A. And the second blood was taken May the 15th.

The Court: May the 15th.

A. 1950.

The Court: I see.

Q. (By Mr. Tuttle): So that then you think that you took this May the 15th test because there had been confusion about whose report came back on February the 15th?

A. No, no, it was taken primarily because we always repeat a positive test. It is too serious a matter to go on a single test, and the fact that the first slip wasn't named was an annoyance but had nothing to do with [1053] repeating the test. My records will show I always repeat a test at least twice, or at least two times altogether.

Q. But it was three months later before you repeated the test?

A. Oh, no. Oh, I see. May the 15th, I am confused, I was thinking that was February.

Well, now, let's see, I have another one here, have to get these in order.

Now, paying more close attention to the month, I was just thinking of the day, close attention to the month, I have a test here of February the 16th, 1950. It says 2-16-50.

(Testimony of Miles H. Robinson.)

Q. Now, with reference to that one, Doctor, do you think that is why you did the test again on 2-16, because of the fact that an unnamed slip came back on February the 15th?

A. No, my answer that I have given explains the situation, except that I was all mixed up about the two months of May and February. No, that test we took on February the 16th, we took 95 per cent of our reason, we would have taken it anyhow, was simply a repeat, and it was merely an annoyance that we got back a slip without her name on it the first time.

Q. Well, then, it is your testimony that it was on February [1054] the 15th that you made your diagnosis, to get back to that, is that correct?

A. It says February the 15th and the only way that that would work out is that I frequently called the laboratory on the phone before they would—let's see. I don't know if that would account for the difference in one day there or not. I often did that.

Q. Well, isn't it your testimony that a report came back on February the 15th, a report was received by you on that day?

A. Yes, the lab reports that. And I will tell you what I think that means. That means that I must have telephoned them, because my recollection is that I would write the lab reports something, that was a personal report to me. I used to call Mrs. Neumeir quite often when I had a case that interested me very greatly and ask her to tell me on the phone what the situation was. Now, I see that is dated

(Testimony of Miles H. Robinson.)

the 16th, so there is an error of one day there and I can't account for that, I don't know what the deal is there.

Q. Well, I am not trying to pin you down to detail on that, but I want to know on what day you made your diagnosis, if you can tell me, Doctor?

A. Well, I tell you I may have just written the wrong date here. I sometimes would write the wrong date, 15 instead [1055] of 16, and perhaps the date, if you are anxious to clear this point, the day sheets may show whether I actually saw her on the 15th or 16th.

The Court: Can you answer the question, Doctor, when you made your diagnosis of Mrs. Brooks the first time, from your records or memory or any other way? That is the question.

A. Yes, your Honor, I made the diagnosis when the laboratory report came back approximately February the 15th or 16th.

The Court: All right.

Q. (By Mr. Tuttle): And what was that diagnosis? A. Syphilis.

Q. Of course, you testified the other day that syphilis takes on a great variety of forms. What type of syphilis was it that you diagnosed?

A. Neurological syphilis.

Q. Well, don't you have terms for all the various types of neurological syphilis? I just wondered what type of neurological syphilis you called it?

A. Well, at that point I had not broken it down into subcategories. It was just neurosyphilis.

(Testimony of Miles H. Robinson.)

Q. Just neurosyphilis as of that time. Did you ever break it down into the subcategories?

A. I don't believe I did particularly, no.

Q. In other words, you made a diagnosis on that date of just general neurosyphilis without breaking it down into any [1056] of the subcategories and continued with that diagnosis from that date forward, is that correct?

A. Well, in all complicated diagnoses, you make first a provisional diagnosis and then the thing is either strengthened or weakened by subsequent findings.

Q. But my question is, you never broke it down into anything other than just a diagnosis generally of neurosyphilis? That was as far as you went in breaking it down? A. Yes, that's right.

Q. Now, what were the findings upon which you based this diagnosis?

A. First, the positive Wasserman; second, the paralysis of the left foot; thirdly, her history was highly suggestive of it. You take a case of——

The Court: That is the answer then, I assume.

A. Yes, your Honor.

The Court: Yes, all right.

Q. (By Mr. Tuttle): Now, just to be a little bit more specific, which of the findings that you made there were indicative of the syphilis? One would be the Wasserman, would it not? A. Yes.

Q. What did that Wasserman show?

A. Positive. I might say in passing that we used

(Testimony of Miles H. Robinson.)

the Kahn in that case, which is the same as the Wasserman for all [1057] practical purposes.

Q. Is that rated as to quantity in any way?

A. Yes, they have a quantitative evaluation of it, which is not very reliable.

Q. And what quantitative evaluation?

A. 2 plus, they have.

Q. 2 plus? A. Yes.

Q. I believe you testified the other day that she showed a strongly positive serological test for syphilis?

The Court: The maximum is 4 plus, isn't it, Doctor, on that system of gradation? I just wanted to get into the record what the system of grading is. What is the maximum?

A. It is a little confusing because there are different plusses in the Wasserman system and different plusses in the Kline system.

The Court: Well, you are not using the Kline, are you; you are using the Wasserman or Kahn?

A. Well, I regret to say, your Honor, that I think we did nothing but Kahns on her, but a Wasserman is sort of a colloquial way to refer to a positive test from long usage.

The Court: Yes, I know that, but what is your system of gradation quantitatively? Isn't it 4 plus, the maximum?

A. Well, I am not trying to confuse the issue, I wanted to [1058] check here for a minute.

The Court: Well, I thought I was trying to make something very simple a little clearer, but I will give up. Go ahead.

(Testimony of Miles H. Robinson.)

A. Well—

The Court: Never mind, Doctor; go ahead.

Q. (By Mr. Tuttle): Well, can you give us an answer to that question the Judge asked you, whether or not you get Kline ratings of 4 plus, 3 plus, 2 plus, 1 plus?

A. Well, it is combined with what is called Kahn units. That is the reason I hesitated. And that is combined with the dilution which is effective, and you have three factors, 1, 2, 3 or 4 plus, and the higher the plus, the higher the Kahn units, and the higher the Kahn units, the higher the dilution, and I just wanted to be sure before I answered that I could describe the inter-relationship of those three factors, and, actually, I haven't thought about this for three or four years and it just escaped my memory for the minute.

But in answer to your question, the way at least it was being done at this laboratory at this time, and, mind you, it is different in different laboratories and in different parts of the country, you almost have to know what they do in a particular laboratory because they are very sensitive, delicate tests, but at this time in [1059] this laboratory, the best of what I can see here and what I recall, a 4 plus Kline or Kahn is the most positive kind of test and it means that it is positive on a very high dilution, a very thin strength of the blood, and that is also equivalent to a very high unitage in Kahn.

Q. Now, I believe it was your testimony the other day that you diagnosed neurological syphilis

(Testimony of Miles H. Robinson.)

right away in the case of Mrs. Brooks on the basis of strongly positive serological tests for syphilis. Do you find this quantitative rating which was given on this Kline test as being a strongly positive serological test for syphilis?

A. Well, now, I can tell you this: My recollection was it was strongly positive and it was on March the 9th, 1950. We have here the record, Kline 4 plus, dilution 1:32, 128 Kahn units.

Q. Aren't you looking at Mr. Brooks' test?

A. Oh, yes, I am. Hold on a minute.

Q. Well, maybe this might be the time for you to straighten these records out. You said the other day, Doctor, that you had them confused and I would like to get this clear, if I can, on what Mrs. Brooks' chart shows.

The Court: Court will recess for ten minutes.

(Whereupon, a short recess was taken.) [1060]

The Court: All right, proceed.

Q. (By Mr. Tuttle): Before we continue with that last question we were talking about, Doctor, I just wanted to ask you whether or not your records show that Dr. Smeltzer had been consulted by Mrs. Brooks at some time previously?

A. Yes, they do.

Q. And do they show what examination or tests he may have made of Mrs. Brooks and when?

A. Yes, it says Smeltzer did a spinal fluid and that refers to a test.

(Testimony of Miles H. Robinson.)

Q. Does it show what the results of that test were? A. No.

Q. Did you ever contact Dr. Smeltzer to find out what the results of his spinal fluid test were?

A. I am not sure whether Mrs. Brooks told me the test showed nothing, or whether I called Dr. Smeltzer and he said that the test showed nothing.

Q. But, in any event, you had in mind Dr. Smeltzer's spinal fluid test had shown nothing at the time? A. Yes.

Q. And when did he make his test?

A. Doesn't say here.

Q. Now, during the recess, have you been able to reassemble those files so that we can continue with Mrs. Brooks' [1061] serological tests for syphilis?

A. Yes, I think I have them in a little better order here.

Q. Now, if you can, I would like you to give us the dates the blood was drawn or the spinal fluid taken by puncture and the results and the dates of the results of those various tests.

A. The first test on here, the blood was taken on February the 9th, 1950, and going over these records now, I see that Mrs. Neumeier was using the Kline test at this time. Sometime she used the Kahn, sometime she used the Kline, sometime she used the Wasserman. She was using Kline tests all through. It is essentially the same as the Wasserman.

She reported back Kline 2 plus on February the 9th. The next test that was taken——

(Testimony of Miles H. Robinson.)

The Court: Reported back when?

A. Well, she did the work on February the 14th.

The Court: I thought you said she reported back February the 9th. Did I hear that wrong?

A. Yes, your Honor, I said that and it wasn't accurate.

The Court: The blood was taken on the 9th, wasn't it?

A. Yes.

The Court: When did the report come back, is your question, isn't it?

Mr. Tuttle: Yes. [1062]

A. Well, the work was done, it came back sometime after February 14, 1950, through the mail. I assume probably arrived the next day.

Q. And the result was 2 plus, did you say?

A. Kline 2 plus.

Q. Anything else evidenced? You have mentioned there were some other things that went along with the quantitative rating.

A. It says positive 2 plus and after that it says Kline 2 plus.

Q. Is there any difference between positive 2 plus and Kline 2 plus?

A. No, she is merely telling what particular one of the three tests she used in this case.

Q. A Wasserman 2 plus would be essentially the same thing, is that correct?

A. I couldn't tell you that because that is a highly specialized field in itself.

Q. Yes, okay. Now continue.

(Testimony of Miles H. Robinson.)

The Court: How did you regard it when it came in, the same as a Wasserman?

A. Yes, your Honor.

The Court: All right, go ahead.

Q. (By Mr. Tuttle): You may continue with your dates on drawing blood or spinal punctures, and the dates which [1063] you received the results back.

A. The next record here shows February 27, 1950, specimen obtained. It was examined on March 11, 1950, in the Department of Health in Seattle. The report shows, after the word "blood," it has an X, meaning it was a test on blood, and in the right-hand column, "Standard flocculation test positive." The Kline and the Kahn are the flocculation tests and whatever one they were using was positive.

Q. What is the quantitative rate?

A. It also says quantitative 1-2, and underneath that, standard complement fixation test, which is the Wasserman, and that is positive also.

Q. Does it give a quantitative rating?

A. The quantitative flocculation rating is 1 to 2, meaning that—as I say, it is a highly specialized thing, just how you conduct these tests, but they simply diluted the blood with an equal quantity of water and it was positive in that dilution.

Q. What did that mean to you, the equivalent of a Wasserman or Kline 1 to 2 plus, is that what it means?

A. Well, as I said before, the quantitative test

(Testimony of Miles H. Robinson.)

is not very reliable and one doesn't pay too much attention to whether it is a 1 plus or a 4 plus.

Q. It isn't a reliable test of syphilis, then, the blood [1064] serology?

A. I didn't say that.

The Court: He said quantitatively it isn't.

Q. (By Mr. Tuttle): But does it mean in terms of Wasserman ratings, this 1 to 2 you talk about here, I am trying to get clear in my mind what that meant. Does it mean the equivalent of 1 to 2 plus, say, on Wasserman test?

A. Oh, there may be no one in the world that can answer that question.

The Court: What question was that?

Mr. Tuttle: My question was whether or not this particular test that he is talking about now, which he said was 1-2, meaning 1 to 2, whether or not that would be, as he would read it, the equivalent of a 1 to 2 plus Wasserman rating or Kline rating?

The Court: Oh.

A. When you compare these different tests, you just can't compare them very well and it is not practical or necessary for the management of syphilis to bother with them, with that, to any great extent, this quantitative business.

Q. Well, then, if you will go ahead, Doctor, with your next tests.

A. The next one seems to be March the 24th, 1950, and it was recorded as positive 3 plus this time and the Kline [1065] was 2 plus. Now, whether she did two different tests, I don't know. Then the quantitative units is 8 Kahn units (1 to 2 dilution).

(Testimony of Miles H. Robinson.)

The next test after that is April 11, 1950, spinal fluid test. The standard complement fixation reaction was negative. Spinal fluid protein was 25 milligrams per 100 millimeters of fluid.

Q. Now, excuse me just a moment there, Doctor. Does that show the spinal fluid was normal?

A. Well——

The Court: I presume you mean so far as syphilis content is concerned?

Mr. Tuttle: Yes, I should probably add that.

A. It is normal as far as the Wasserman type of test goes. I think that protein figure is normal.

Q. And that was the first spinal test now that you made on her?

A. That was the first that I took on her, yes.

Q. All right, now, you may continue with your tests.

A. I have more on that. You see, these records are in three parts. Part of them are the tests that came back from the lab, part of them are on a slip here that I put in here—apparently, I was down at St. Mary's and wrote some notes on a slip and never incorporated it in the other record—and then I have in my personal record of her here, April 11, 1950, spinal tap, St. Mary's, cell [1066] count five cells per millimeter, protein 40 milligrams per cent.

Now, five cells per millimeter is a positive spinal fluid finding typical of syphilis. The normal number of cells should never be over two or three, and if you have even as many as five, that is a very

(Testimony of Miles H. Robinson.)

significant finding and confirmed my opinion that she had neurosyphilis.

Q. Now, that was what date?

A. On April 11, 1950.

Q. And what laboratory did that?

A. I made that count myself. It is a very touchy thing to do an accurate cell count and it has to be done promptly because the cells deteriorate, so I made that count myself and noted it at the time here.

Q. That was a result of the spinal puncture you made?

A. Yes, it is routine for me to make my own cell counts on a spinal puncture.

Q. Now, what was your next test then after that? That was April, you told us about one in May which was negative and the protein was normal, is that right?

A. No, the one I was telling you about is the sample of spinal fluid which I sent to the State Health Department on April the 11th, and so part of the record is on the slip that came back from the State Health Department and [1067] part of it is in my records which I wrote at the time here. Part of the laboratory work was done in Seattle, because I am not equipped to do a Wasserman on spinal fluid and neither is anyone in Walla Walla, but the cell count has to be done immediately and I either did it right at St. Mary's at the time or else I came back to the office and did it immediately in my office.

(Testimony of Miles H. Robinson.)

The Court: Well, your cell count didn't correspond with the laboratory tests, then, Doctor? The laboratory test was negative, wasn't it?

A. Well, your Honor, the diagnosis of syphilis in the spinal fluid is made up of several factors. One of them is the serological test of Wasserman, of Kline, or Kahn.

The Court: Does that show any spirochetes present in the fluid?

A. No, your Honor, that Wasserman type of test shows whether there are any spirochetes anywhere in the body which have caused a reaction in the body.

The Court: Oh.

A. Which can be detected by the Wasserman test. One practically never can see the spirochetes in syphilis except in a fresh case. Actually, the lesion on the skin is the only place you can find them. So the test, to be positive in syphilis—

The Court: I understood that a Wasserman and similar [1068] tests are chemical tests which do not discover bacteria directly, is that correct?

A. Yes, your Honor.

The Court: Well, go ahead. I just wanted to get things straightened out in my own mind, whether there is any discrepancy between the laboratory tests and your cell count.

A. There is an interesting finding there, but it is not really a discrepancy. The diagnosis depends upon several factors and a preponderance of those factors being positive will enable you to make the

(Testimony of Miles H. Robinson.)

diagnosis. You don't have to have all of them, you have to have some of them, and the Wasserman is only one of them. The other one is the cell count, the other one is the protein, the amount of protein in the spinal fluid, which makes three. Of all those, the Wasserman type serological test is the most important of all, but the others have collateral importance.

The Court: Well, what did this indication negative mean in the laboratory's report on the spinal fluid?

A. That referred only to the serological test, which is one of the three factors.

The Court: I see. All right, go ahead.

Q. (By Mr. Tuttle): Well, with reference to the cells, would it be possible that bleeding from the spinal needle could cause the five cells that you found? [1069]

A. No, because that bleeding involves red blood cells and these are white blood cells that you count.

Q. That is, those were only white blood cells that you were counting at the time in connection with your—

A. There were no red blood cells.

The Court: I thought blood contained both.

A. Yes, but this is spinal fluid, your Honor. We put a needle into the spinal fluid.

The Court: It is hard for me to follow this, of course, but I thought what counsel was inquiring about was whether the blood content mixed up in with the spinal fluid caused a cell count to be pres-

(Testimony of Miles H. Robinson.)

ent. Of course, if the blood got into it, it would have white cells as well as red.

A. Yes, your Honor, that is exactly the situation.

The Court: Go ahead.

Q. (By Mr. Tuttle): Continue with your next tests.

A. I counted five cells, five white blood cells, in this spinal fluid sample, which is a clear, watery material, and if there had been any contamination with the blood, there would have been a lot of red blood cells with the white blood cells there.

The Court: Yes, I see.

A. Then we had the protein tested and I can't tell you who did that, whether it was done at St. Mary's or where it was done. At the moment, I just don't recall. But it [1070] says here 40 milligrams per cent, which, as I recall, is a definite elevation of the protein.

Q. And what was that on?

A. That is on this same spinal fluid that I took at St. Mary's.

Q. In other words, that is one of your notes, that is not——

A. It is my note, but I am at a loss to say who ran that particular protein. I don't recall, and I don't find in here a lab report on it. I may have had my bacteriologist in the laboratory at that time and he ran proteins. I would have to check the records. I know I didn't, I doubt if I ran it, but I don't think so. [1071]

(Testimony of Miles H. Robinson.)

The Court: And I don't think there is any necessity for you knocking down straw men here, and if they produce evidence here that I think has probative value that any of these defendants did send the Brooks out of town and got a false diagnosis and/or circulated false reports, why, then, you may go into it, and, if it becomes proper, you might even recall the plaintiff for further cross-examination.

But I think I will make that ruling, that unless and until there is some showing on that particular issue set out in subparagraph 15 of the Roman numeral paragraph 26, that we will not go into it.

Is that clear, then?

Mr. Tuttle: That is, your Honor.

The Court: All right, go ahead.

Mr. Kimball: Your Honor, may I make a further point, [1082] however, that as I understood the Doctor's testimony, he said that he did what he did relative to the health department and the other relatives because it was necessary to his treatment of this disease of syphilis, and it seems to me it would be very material as to whether or not Mrs. Brooks had syphilis to justify the actions that the Doctor said he took. Would it not be material to that?

The Court: Well, I don't think so. As I recall his testimony, he said the reason he reported it was because he learned that Mr. Brooks had within a few years past had a test when he came in from England which showed negative, and that that was an indication to him that it might have been recent

(Testimony of Miles H. Robinson.)

and therefore, because it was recent, Mr. Brooks, that he should make the report when he did, so he included the whole family because of their having the disease and that there might possibly have been a fresh infection of the wife, I presume. So that, at any rate, I don't think that this brings this into issue as I remember the testimony.

Mr. Tuttle: I don't want to quarrel with the Court, but I think that the letter he wrote specified Mr. and Mrs. Brooks, the ones he reported, and that has been introduced by the plaintiff. I just want that clear.

The Court: Well, all right.

Q. (By Mr. Tuttle): What date was it, Doctor, that you received the letter from Mr. Fullerton, or a copy of that [1083] letter, rather, which Mr. Fullerton wrote to Mrs. Edwards concerning the dollar and a half? A. September 30, 1950.

Q. Do you recall what day of the week that was?

A. Yes, that was a Saturday.

Q. And what was your reaction to that letter when you received it?

A. I was very much surprised.

Q. What did you do then about the letter?

A. I got in touch with the Edwards family.

Q. And can you tell me when it was you got in touch with them?

A. Sometime the first part of the following week.

Q. Monday or Tuesday the following week, would you say?

(Testimony of Miles H. Robinson.)

A. Well, my recollection is it was Tuesday or Wednesday.

Q. And did you have it in mind that you wanted to get hold of this original letter when you were contacting the family? A. No.

Q. What did you have in mind at the time?

A. I had in mind to find out what the complaint was about.

Q. And were you successful in your efforts in getting in touch with them the first of the week?

A. Yes.

Q. And where was that? [1084]

A. In the home of Mrs. Edwards.

Q. And who was present?

A. Mrs. Edwards and Mrs. Brooks are the only two that I remember. I think there may have been some children or someone else there.

Q. At that time, did you ask to see the original letter? A. Yes.

Q. And what did they tell you at the time?

A. Said they hadn't got it yet.

Q. Did they offer any explanation as to why they hadn't gotten it yet?

A. Yes, they said something about the post office, that the post office was closed at the hour when they were around where they could get it.

Q. And that was College Place, was it not, where you saw them? A. Yes.

Q. And the Edwards lived in College Place, did they not?

A. Well, that is so far as I know, I think that

(Testimony of Miles H. Robinson.)

was Mrs. Edwards' home. I went to so many different places where I saw the Brooks, but I **think** that was Mrs. Edwards' home, yes.

Q. And College Place has a separate post office, does it not? A. I believe it does.

Q. And did they explain to you that their mail came general [1085] delivery?

A. Well, I don't recall exactly whether it was that or whether they had a box, although I think she did say they didn't get their mail at the house.

Q. Did she convey the thought to you that they didn't get their mail with regularity because the post office was usually closed by the time they got home inasmuch as they were working people?

A. All I gathered was they didn't get their mail regularly. I didn't know just why.

Q. Well, was that about the substance of your conversation on that particular evening?

A. No, I explained my action in regard to the little child as to why I had done what I did, and I asked her, well, "why did you make any complaint?" And I said, "I told you to have the child vomit and I gathered from you that the child did vomit and you were satisfied. The child is well, why did you make any complaint about it?"

Q. Did she reply to that?

A. I really can't tell you what she said to that. My recollection is that she said something about a prescription and she kind of laughed about it, and Mrs. Brooks was—well, they were both very con-

(Testimony of Miles H. Robinson.)

ciliatory about the whole thing and no more was really said about the complaint. [1086]

Q. Well, then, did you contact the Edwards family again after this conciliatory conversation that you had the first of the week?

A. Well, we talked a little further about it and I said, "Well, I would like to see what that letter is." And she said, "Well, I have no objection, I will be glad to let you see it when we get it."

And then the next thing that happened was Mrs. Brooks——

Q. Excuse me just a moment. Did you tell her that you received a copy of the letter?

A. Well, I think I must have because otherwise I wouldn't know anything about the letter.

Q. Yes. All right.

A. Mrs. Brooks then got out her pocketbook and said, "Doctor, I would like to pay my bill." And she offered me, and the records show \$13.00 which I took. And then I said to her, "How about this old problem about your husband? You know that he has refused treatment, refused tests, and I think you should have him come in," which was a subject I raised with her at regular intervals, I would say every two or three times I would see her I would ask her about this problem. And she said, "Well, I will do what I can, but he is pretty stubborn."

Well, that is all that we talked about at that time. [1087]

Q. Then when did you next contact the Edwards?

(Testimony of Miles H. Robinson.)

The Court: Let's see, who was present at this conversation?

A. Mrs. Brooks and Mrs. Edwards are the only people that I recall.

The Court: All right.

A. Well, the week went by and I didn't get a chance to contact the family until the end of the week. I had a lot of very sick people in the hospital and somewhere, I think it was Friday or Saturday, I finally reached Mr. Edwards and my conversation with him was practically identical with what it was with the two ladies. I asked him about the—I told him, I said, about this complaint and explained to him that what I had done, and I felt I had done right, and I was quite concerned that he had gone, or he and his wife or whoever it was—I guess it was his wife actually made the complaint, a complaint to the medical society about this thing, without ever talking to me, and I went over what I had done for the child, and, as far as I recall, he agreed that there had been nothing, that he had no complaint about the child. He accepted my explanation and that he had no complaint.

Well, then I reminded him, I said, "This thing is a very serious precedent in the society, telling patients [1088] not to pay bills," and I said to him, "Your wife said she would let me see this letter that was sent out." And I don't know whether I told him at the time or not that I wondered just whether the letter that was sent out was the same as the letter I had got or what.

(Testimony of Miles H. Robinson.)

And he said, "Well," he said, "I haven't got the letter yet."

Well, I was a little astonished, because here it had been nearly a week and I thought, well, that is sort of an evasive kind of thing to say. I couldn't conceive of anybody not getting their mail, I mean, any oftener than a week, and I think probably the way he said it kind of aroused my suspicions that there was more behind this than I realized.

Q. (By Mr. Tuttle): Just the way in which he said it, was that what aroused your suspicion?

A. Well, I can't tell you at this moment, but it was the fact that he hadn't got his mail and here was a letter which had prompted me to make a call on a family and inquire about this complaint. I told his wife that it was an unusual thing, that I had never heard of a letter being sent, an official letter being sent, from the society to tell patients not to pay bills, and I felt quite definitely that anybody with a grain of curiosity would stop by the post office and pick up this letter [1089] that a doctor had inquired about. Therefore, I felt that he was evasive and I think his tone contributed to it.

Well, then, I said to him, I said, "Now, you know I have had my problems with the family. Mrs. Brooks is a difficult problem from the standpoint of a lot of long treatment, and your father-in-law, he has got a serious condition, too, and you should have him come in."

Q. Did you tell him that on Saturday, you say?

A. I told all the members of the Edwards family

(Testimony of Miles H. Robinson.)

that I thought that the father should come in. I told them when I saw them in College Place and I am quite confident I told him over the telephone or whenever it was I saw him.

Q. Well, was it possible that you didn't tell him on that Saturday that his father-in-law was suffering from a serious condition?

A. Well, I don't think so, because my attitude to all members of the family was the same. I was concerned about the complaint and I was concerned about the old gentleman taking a risk with his health and putting me in a position where I had to carry the responsibility as to whether anything was going to go wrong with him.

So he said, "Well, I will do what I can and when I get the letter, I will let you see it." Well, [1090] that probably was on a Friday, I think it probably was on a Friday, and that was the extent of my conversation with Edwards up to that time.

The Court: Court will recess now until 2 o'clock.

(Whereupon the trial in the instant cause was recessed until 2 o'clock p.m., this date.) [1091]

Thursday, March 22, 1956—2 o'Clock P.M.

(The trial in the instant cause was resumed pursuant to the noon recess, all parties being present as before, and the following proceedings were had, to wit:)

MILES H. ROBINSON

plaintiff herein, having been previously duly sworn, resumed the stand and testified further as follows.

Cross-Examination
(Continued)

By Mr. Tuttle:

Q. Dr. Robinson, on the 7th of October, which was Saturday, 1950, did you call Mr. Brooks asking him for the letter, the original of the dollar and a half letter? A. I called Mr. Brooks.

Q. And in that conversation, did you ask him to get you the original letter? A. No.

Q. In what conversation did you ask him for the original letter?

A. I never asked him for the original letter or any letter.

Q. Did you ever ask him to get it for you and bring it in with him when he came in? [1092]

A. I never asked him to get it. I said that, "If I am going to take care of you, I would like to have this business cleared up about the complaint and about this letter that was sent out, and one of the conditions of my taking care of you, a condition of my taking care of you, is I would like to see that letter which your daughter said she was going to show me."

Q. And what was your desire to see that letter?

A. Well, as I mentioned previously, it was a very peculiar letter and I wondered just whether the letter that Mr. Fullerton had sent out was the same as the letter that I had got, and I think it was

(Testimony of Miles H. Robinson.)

merely curiosity, to begin with, but it really became an issue as to whether I would take care of the family while this letter was floating around.

Q. Did you have in mind upon receipt of this copy of the letter from Mr. Fullerton that you might bring a lawsuit against somebody?

A. I certainly had nothing in mind of that sort.

Q. Doctor, I am quoting from the deposition which was taken last September in the Chicago suit against the AMA. On page 37, question by Mr. Wilden:

“Q. Did you contemplate litigation at that time, Doctor?

“A. I contemplated litigation as soon as [1093] that secret grievance committee wrote that official letter to my patient and told them not to pay my bill for a dollar and a half.

“Q. Did you contemplate litigation at that time against the AMA?

“A. I couldn't tell you who I contemplated it against. I merely felt that the local society was setting a precedent and that next week it could be \$150 or \$1,500 and they would write that patient of mine and say don't pay his bill, and I thought it looked to me as if that was going to have to come before the citizens in the town in a court of law.”

Do you now say you didn't make such a statement as that?

A. No, I recall that statement. I have thought about that matter and, looking back at it, I only knew that I contemplated suing some responsible

(Testimony of Miles H. Robinson.)

people fairly early in the game. As far as I know, the idea of a suit occurred to me after the annual meeting of December 14, 1950, which was about that general time.

Now, when the letter was sent out, I did feel that the matter should come before the society, but [1094] I had no idea of a lawsuit at that time, as early as when the letter was sent out, and what I said there, I was looking backward and I felt that it was very early in the game that I had the idea of the lawsuit.

Q. Well, in view of that statement, isn't it possible, Doctor, that that was why you had such an unusual interest in seeing the original of this copy, that you wanted to obtain it for litigation?

A. No, I don't think so. The letter to me was a precedent. Such a letter had never been sent out to any doctor before and I, in all the years that I had been connected with medicine, have never heard of anybody sending a letter out to a patient without the doctor having a chance to talk it over with the patient. In fact, I never heard of any such letter being sent out.

Q. Well, is that your reason, then, for wanting to see it, why you desired to see the letter, simply because it was unprecedented?

A. Well, as I say, the letter really became an issue. Originally, it was a matter of curiosity, I think, and I am methodical by nature and I really wondered what the letter was. The family offered to show it to me, and then when a week went by and they were telling me this extraordinary story

(Testimony of Miles H. Robinson.)

that they don't go to the post office for a solid week and the attitude of Mr. Edwards [1095] and of Mr. Brooks both about the complaint in the letter, I felt that there was something very peculiar afoot.

Q. I thought you told me that Mrs. Edwards' attitude had been very conciliatory when you had talked with her?

A. Conciliatory about their complaint, but deceptive and evasive about this letter.

Q. What was deceptive and evasive in what they told you? They told you, didn't they, about the fact they didn't get their mail except at irregular intervals because they got home too late to get their mail in the post office?

A. Well, on Friday, I think it was Friday, which was the first time I talked to Mr. Edwards—I had already talked, you see, a couple of days earlier with Mrs. Edwards about the complaint and the matter of the letter came up really in a very casual way and they had said, "Well, we will be glad to show you the letter when it comes in"—well, then, I talked to Edwards on Friday about this complaint and, of course, the letter came up in our conversation and here it was Friday, six days after the letter had been mailed, because I had got a copy of it on Saturday, the previous Saturday, and he said, well, he hadn't got that letter yet. And I thought, in the first place, that doesn't sound right, [1096] and, in the second place, the way he said it was if he was kind of dealing with a detective mystery or something. And I knew very well that anybody with

(Testimony of Miles H. Robinson.)

normal curiosity would have marched right down to the post office and got the letter, and I mean, after all, I had paid a call on them about the complaint and the letter had come up and it would be perfectly natural to go down there and look into the matter.

So when he told me that he hadn't been to the post office yet, and the way he said it, I felt that he was very evasive.

Q. Well, then, upon reaching the conclusion that he was evasive and there was something very mysterious going on here, what did you conclude to do then?

A. Well, we had raised earlier in the week the question of Mr. Brooks' health and the family had said they would see what they could do to get that problem settled. After all, I had not had very much to do with the family——

The Court: I think the question was what he did next.

Mr. Tuttle: That's right, your Honor.

The Court: Answer the questions not quite so lengthily and I think we might proceed a little more rapidly.

This was all gone over before, of course.

Q. (By Mr. Tuttle): What did you do next, Doctor? [1097]

A. I called Mr. Brooks on a Saturday.

Q. And by that time, were you angered by the situation?

(Testimony of Miles H. Robinson.)

A. No, not at all. I was puzzled and concerned, but I wasn't angry.

Q. Did anything occur in the conversation on Saturday with Mr. Brooks which angered you?

A. Well, he said something which annoyed me, yes.

Q. What was that?

A. He said, "I have another daughter who lives in Spokane now and she was treated by a doctor and, after a considerable length of time, the doctor told her, 'I believe I have made a mistake in my diagnosis.'" And Brooks, Tom Brooks, said to me, "I told her not to pay the bill, too."

And that immediately in a way connected it up, made it clear to me that he knew about this complaint that his daughter had made and I got the impression that he had instigated it, and I felt that was a very unfair thing for him to have done in view of all that I had done for his family.

Q. And you got that impression then he had instigated the complaint by Mrs. Edwards against you? A. Yes.

Q. Because he had talked about the daughter in Spokane, is that right? [1098]

A. Well, it was partly from that and partly when I discussed the complaint with him, his whole attitude was patronizing and he just exhibited familiarity with the matter.

Q. Well, then, what did you do next after the Saturday conversation with Mr. Brooks?

A. I telephoned him on Sunday morning.

(Testimony of Miles H. Robinson.)

Q. And were you still annoyed and angry at the time? A. I didn't say I was angry.

Q. I thought you said you were angered by the fact that you suspected that he had induced his daughter to make a complaint against you?

A. Well, I was annoyed by it, but I don't think it would be fair to say——

The Court: He said annoyed, rather than angry.

Mr. Tuttle: Oh, I'm sorry.

Q. Well, then, were you annoyed when you called him up on Sunday morning?

A. If you are asking for my general feeling, I was highly concerned.

Q. All right. And what did you do on Sunday morning when you talked to him?

A. Well, you see, Friday night the last thing that Tom Brooks said to me was, he said in connection with my asking him if he couldn't come in and get this question [1099] settled about his treatment and proper diagnosis, further diagnosis.

And he said, "Well, I don't even believe I have got it." [1100]

And he said, "Why, when I came in this country from England, I had a negative Wasserman."

Well, that altered the entire picture of the problem about him, because if he had a negative Wasserman two and a small number of months or whatever it was——

The Court: In any event, it was recent?

A. Yes, your Honor.

(Testimony of Miles H. Robinson.)

The Court: You testified before the same as you did on direct?

A. Yes, sir.

The Court: All right, proceed. I don't see any point in going over this so many times.

Q. (By Mr. Tuttle): Well, then, did you discuss the letter again, about bringing the letter in again, on the Sunday morning conversation?

A. The letter came up in the conversation, yes.

Q. And did you make that a condition of continuing your relationship with Mr. Brooks and the rest of the family, that he bring that letter in?

A. Well, I think that that is generally speaking a fair statement as far as Mr. Brooks is concerned. I told him, "The situation is really urgent with regard to your health, much more than I had appreciated, and from the standpoint of the family and the people that are exposed to you, and," I said, "I am willing to take care of you, [1101] but I expect our relationship to be on a frank and open basis and one of the things that has come up is this matter of the letter, and if you are going to come in, I expect you to bring the letter with you."

Q. And did you at the same time make it clear to him that if he didn't come in and didn't bring the letter, that you were going to terminate your relationship with him?

A. I made it clear to him that if I was not going to be responsible for him, I would turn him over to the health department.

(Testimony of Miles H. Robinson.)

Q. And did you say anything about revealing it to other members of his family?

A. At some time or other on Friday or Saturday, or, let's see, I didn't talk to him on Friday—on Saturday or Sunday, in explaining to him the seriousness of his disease, I said to him that "I think that your family ought to know of this situation."

Q. Well, then, what would Mr. Brooks have had to do in order to prevent you from reporting his condition to the members of his family and to the health authorities?

A. Well, I never said that "I am going to report this to your family," because, while I felt it was probably my duty to do that, I felt that since I was going to turn him over to the health department—

Q. Just a minute—— [1102]

The Court: Can't you answer what you did and what was said and not your reactions, unless they are asked for, please, Doctor? This is taking a great deal of time, unnecessarily, I think. Go ahead.

Q. (By Mr. Tuttle): I just asked you what Mr. Brooks would have had to do in order to prevent your reporting it to the health officer?

A. Oh, I thought your question included two things. Well, in answer to that question, he would have to come in and submit to adequate tests and take whatever treatment was indicated.

Q. And about the letter?

A. The letter was not a major issue. That is——

Q. You say it was not a major issue?

A. That is something which he seized upon.

(Testimony of Miles H. Robinson.)

Q. I am referring now to your deposition in this case, Doctor, at page 270, line 18:

“Q. Let me ask the question this way, and I will waive the former question. What would Mr. Brooks have had to do to prevent you from reporting his condition to other members of his family and the health authorities? Do you object to that?”

“Mr. McNichols: No.

“A. Come into the office. [1103]

“Q. That is all?”

“A. Well, I made it a condition I wasn't interested in having these people come in unless they brought the letter with them. They made the letter a big issue, not I. This mysterious letter floating around that nobody knew where it was and they hadn't received it a week later, so I naturally made that a condition because by that time they were, I thought, pretty deceitful about the whole thing and I was willing to work out what I could with them, but I wanted them to come clean on this letter.”

Now, would you say you made it a condition of continuing your relationship with the family that they bring the letter in to you?

A. I believe that by that time it had become a condition of my continuing a relationship with them.

Q. Did you say this that I have just read?

A. It sounds like what I said, sounds like what I have just said this morning.

Q. Well, would you say that these statements were made to Mr. Brooks in anger and malice at that time?

(Testimony of Miles H. Robinson.)

A. Why, no, I was very anxious and I tried to reason with him.

Q. Did you ever discuss this matter with Mrs. Brooks, who [1104] was your patient that had been receiving treatment over a period of five or six months?

A. Why, certainly I discussed it with her every few times that I saw her, "What are we going to do about your husband?"

Q. I am asking if you discussed the matter of bringing in the letter, which conditioned your continuing treatment, with Mrs. Brooks?

A. Well, no.

Q. Did you ever tell Mrs. Brooks that unless the letter were produced, that you were going to discontinue your relationship with her and reveal her disease to the health authorities?

A. I never told that to anybody.

Q. You never told that to anybody, you say?

A. Why, no.

Q. Didn't you tell Mr. Brooks that you were going to reveal his disease if he didn't bring in the letter so that you could continue your relationship with him?

A. Not the way you are putting it.

Q. Well, in any event, you never discussed it, did you, with Mrs. Brooks about the matter of revealing the disease to the health authorities?

A. Why, no.

Q. Or other members of the family. Did you ever at any time [1105] offer Mr. or Mrs. Brooks

(Testimony of Miles H. Robinson.)

the opportunity of placing themselves under the care of another physician with whom happier relations could be maintained? A. Yes.

Q. Did you offer them the opportunity to go to another doctor and have him assume responsibility for managing their disease? A. Yes.

Q. You have never told us that before. When did you tell them that?

A. I don't believe you have ever asked me that.

Q. When did you tell them that?

A. I think my records may show that. I can tell you the circumstances, roughly the time.

When we decided upon a lengthy course of penicillin for Mrs. Brooks, we embarked upon it and, of course, it was somewhat expensive. Then I arranged for the daughter to give the medicine in the home herself so as to save them money. Well, it was fifty cents instead of four dollars an injection and, even so, the treatment ran on quite a while and

Mr. Brooks was a little testy that the bills—and I said to him at that time, “I will be perfectly happy for you to go down to Portland”——

The Court: I don't believe that is what counsel's question was. It is after this trouble came up about the [1106] letter, did you give them an opportunity to go to another physician before you turned them over to the health department?

Isn't that your question?

Mr. Tuttle: That was my question.

The Court: Not way back before the letter. That is something he didn't ask about.

(Testimony of Miles H. Robinson.)

A. I'm sorry.

The Court: Now ask him the question again or the reporter will read it. Let's have answers to the questions, please, and not this long, rambling dissertation about something that wasn't inquired into.

(The question was read.)

The Court: I assume what you referred to was not the past required treatment, but after the letter controversy came up?

Mr. Tuttle: Yes, from the time the letter controversy came up with Mr. Brooks.

A. Oh, no, at that time I did not.

Mr. Tuttle: Number 21, please.

The Court: Exhibit 21?

Mr. Tuttle: Yes, I believe it is in evidence, isn't it, your Honor?

The Court: Yes, it is in evidence.

Q. (By Mr. Tuttle): Well, I will ask you, Doctor, while we [1107] are looking for this exhibit, if you didn't phone Mr. Edwards on Monday morning and tell him that unless he brought the letter in and this matter was patched up, that you were going to reveal the disease of your mother-in-law and father-in-law to the county health officer? A. No.

Q. You did not? A. I did not.

The Court: What day was that, Mr. Tuttle?

Mr. Tuttle: That would have been Monday, October the 9th, your Honor.

Q. You had a conversation with him, did you not? A. Yes, I did.

(Testimony of Miles H. Robinson.)

Q. But you did not make any statement to that effect?

A. Maybe you'd better ask that question again. I didn't hear it too well.

Q. Well, I will ask you first if you had a conversation?

Mr. Sembower: May we have the original question read, please?

(The question was read.)

A. No.

Q. (By Mr. Tuttle): What did you say to him on Monday morning?

A. I said, "I talked to your father-in-law yesterday and I told him that I am through with the case and I just [1108] wanted to let you know that I am going to have to turn them over to the health department."

Q. Didn't you say something at that time about taking him back into the happy family or patching the matter up, something to that effect?

A. Well, I seem to recall that expression, the "happy family." It may be, I am not exactly certain of the subject of what I said to him there, except that it was on the matter of I could not work out anything with Mr. Brooks and it may be that I told him that, "It looks like we can't work anything out and that I will have to turn them over." I am not entirely clear on that particular point because immediately he more or less cut me off.

Q. What did you say about the condition of his

(Testimony of Miles H. Robinson.)

mother-in-law and father-in-law at that time to Mr. Edwards?

A. I have never said anything to Mr. Edwards except that Mr. Brooks, his father-in-law, had a serious condition which should be treated.

Q. Why were you talking about the health authorities, then, Doctor?

A. Well, if I didn't treat it, they would have to.

Q. Did you ever tell Mr. Edwards that unless he brought the letter in to you, that you were going to be through with the family, wouldn't treat them any longer?

A. I never told them any such thing as that, but the letter [1109] became a condition of whether I would go on with the family, that is true.

Q. Well, I am going to refresh your recollection from page 302 of the Chicago deposition of you, Doctor:

“Q. You say Mr. Edwards didn't come in to see you, is that correct? A. That is right.

“Q. Did you ever call him again during this period of time?

“A. Well, I called him or he called me again, I know that.

“Q. Well, what was said by you and what was said by him?

“A. And I asked him when is he going to come in. And he said ‘Well, I don't know.’ And then we talked about the letter. I don't know just how it came up. And he said, ‘Well, I haven't got the letter yet,’ and this was four, five or six days after

(Testimony of Miles H. Robinson.)

it had been mailed, that I knew it had been mailed, because Fullerton gave me a copy of the letter and so I knew right away he was lying and I didn't like that. I thought, this is getting thicker and thicker. So I said, 'Well, unless you come in and unless you bring the letter in as evidence of good faith, I am [1110] through with all you people.' "

Do you remember making such remarks as that to Mr. Edwards?

A. Well, I had talked to both Mr. Edwards and Mr. Brooks to the effect that I couldn't bear——

Q. Just answer my question. I asked you if you said that, Doctor?

A. Well, I don't believe that reflects——

The Court: Your question isn't clear to me, Mr. Tuttle. I doubt if it is to the witness. Do you mean did he so testify, or did he actually so say over the telephone?

Mr. Tuttle: Did you so testify in your Chicago deposition?

A. Well, I assume so. I haven't read that.

Q. If you did so testify, was that testimony correct, did you have such a conversation with Mr. Edwards?

A. Well, I think that is rather an abbreviated version of it and really doesn't carry an accurate picture of the situation.

Q. Well, then, I am quoting the last paragraph of Plaintiff's Exhibit 21, Doctor, which is a letter from you to Dr. Sharp dated October the 12th, 1950, in which you say this:

(Testimony of Miles H. Robinson.)

“Dear Dr. Sharp:

“The name and address of the Brooks’ [1111] daughter which I was unable to give you yesterday is: Mrs. William Lepiane, 507 North Third Street, Walla Walla, Wash.”

How did you give him the information? Was that oral information on the day before that you had given Dr. Sharp?

A. Yes, I telephoned him.

Q. And this letter is to provide information which you didn’t have available for your oral conversation, is that right?

A. It is to provide information he asked for.

Q. Then you continue:

“You have, I believe, the other daughter, Mrs. Noel Edwards, 225 Southeast 6th, College Place, Washington, and the Brooks’ new address, 215 North Madison, Walla Walla.”

Now you say:

“I am certainly glad to turn these people over to you; for as I mentioned yesterday, from the way Mr. Brooks has been acting lately and Mr. Edwards’ false statement the other day that they all knew from the first about the Brooks’ parents having syphilis, I have no faith in anything they say. For all I know, Mr. Brooks’ strongly positive Kahn may be a reinfection and [1112] he may be infectious.”

Did you mean that, “I am certainly glad to turn these people over to you”?

A. What I meant was this, that Brooks was a

(Testimony of Miles H. Robinson.)

very considerable worry to me and I was very glad to get out from under that worry.

Q. You didn't mean that you were glad to provide them with these names and give this information out of malice because of the way you felt they treated you?

A. Well, no, that is my duty to give him the names of contacts.

Q. And you don't think that that statement which I just read imports that at all?

A. I don't understand your question.

Q. Now, Doctor, some time after these troubles with the medical society started, I believe you have stated some place along the line that you had some difficulty with the post office over a return receipt?

A. Yes, I did.

Q. And do you relate that difficulty to the operation of the alleged conspiracy in any way?

Mr. Sembower: Your Honor, I object to that. There is nothing on direct testimony about the matter of the post office. I don't see what materiality that has to this cause of action, unless counsel suggests some for the purpose of [1113] this question.

Mr. Tuttle: Well, we have discussed the operation of this conspiracy, your Honor. I think it is pertinent cross-examination to determine from this witness the way and the manner in which he thinks this conspiracy operated.

The Court: Well, I will overrule the objection, yes. Do you understand the question, Doctor?

A. I wonder if it could be repeated?

(Testimony of Miles H. Robinson.)

The Court: Do you relate the post office incident in any way to the conspiracy?

A. That word "in any way"—

Q. (By Mr. Tuttle): Well, I will take "in any way" out. Do you relate it to the operation of the conspiracy?

Mr. Sembower: Your Honor—

A. Oh, I would say no.

Mr. Sembower: May we have some questions that indicate what counsel has in mind? I mean, the post office incident—

The Court: Well, yes, I think you should say when it was.

Mr. Sembower: And what it involved.

The Court: And what it was, yes.

Q. (By Mr. Tuttle): Tell us what the incident was, then, Doctor.

Mr. Sembower: If he recalls. [1114]

A. I wrote this letter that you have referred to—I think it is dated October 12, 1950—to Dr. Sharp to turn over these people for his care and I sent it registered mail because I—well, if I am allowed to say so, because I was afraid that I would be held responsible if I could not prove that I had discharged my duty on the Brooks, so I sent it registered mail with a return receipt and the return receipt never came back.

Q. (By Mr. Tuttle): And did you then make a complaint about that to the postal authorities in Seattle?

A. Eventually I did.

Q. And have you not related that to the con-

(Testimony of Miles H. Robinson.)

spiracy, thinking the conspiracy operated in such a way as to cause this trouble for you?

A. Well, I was advised by my counsel not to clear anybody when I didn't know what they may or may not have done, but I can only tell you what happened. I don't know how the conspiracy operated.

Q. Well, did you tell us that there was a relationship between the postmaster here in Walla Walla and the attorney who represented the St. Mary's Hospital which you felt related this to the operation of the conspiracy?

A. Well, I think I said that one was a relative of the other in answer to some question or other.

Q. And on that basis, did you not relate it to the [1115] conspiracy?

A. As I recall it, an awfully broad question was put to me as to whether I thought this incident had anything to do with my difficulties and, obviously, it did. I couldn't get this return receipt back.

Q. And that was the only thing, just your inability to get the return receipt, that had anything to do with your difficulties?

A. That is the only thing that bothered me.

Q. Well, you offered us this description of the relationship of the postmaster here in Walla Walla to Mr. Thompson, the St. Mary's Hospital attorney—

Mr. Sembower: Well, your Honor, he says he offered it. How does he mean he offered it? It may have been elicited.

(Testimony of Miles H. Robinson.)

The Court: I think the question is objectionable in that form. I will sustain the objection.

Q. (By Mr. Tuttle): Now, in your state suit here in Walla Walla, Judge Simpson was sitting on that case, was he not? A. Yes.

Q. And you dismissed your case voluntarily before you ever got at issue, did you not, at the time?

A. Well, the legal wording, I don't know. I left town and I stopped that case without any prejudice one way or the other.

Q. And did you feel at the time that you were getting unfair [1116] treatment from Judge Simpson?

The Court: I don't think we should go into that.

Mr. McNichols: I think that is just an effort, your Honor, to raise prejudice in this case.

The Court: I beg pardon?

Mr. McNichols: I think counsel is attempting to raise prejudice in this case and I object to that inference.

The Court: There isn't indication of that to me so far, but I just don't think we should go into the state case. We have enough trouble with this one.

Q. (By Mr. Tuttle): Well, did you tell us in any way that that was connected with the conspiracy, Doctor?

A. Well, no, it is the same as the post office. I was being asked every conceivable thing that had happened to me and I think the matter of that case came up.

(Testimony of Miles H. Robinson.)

Q. So that neither of those two incidents related to the operation of this conspiracy in any way?

A. Well, I really don't know what is related to the conspiracy.

Q. But you haven't any evidence that there was any relationship, have you? A. Why, no.

Q. And you told us of difficulties with the telephone company?

A. I may have, I guess I did. [1117]

Q. And do you relate that in any way to the operation of this conspiracy?

A. Well, it is the same situation as the two things we have just been discussing. I had my problems with the telephone company and I know what happened, and I was asked a very broad question as to whether I thought it could possibly have anything to do with this conspiracy and I said, "Well, I am not going to say it does not have anything to do with it."

Q. About the newspaper publicity, you were displeased about some of the newspaper publicity involving this case and also some of your family situation, were you not?

Mr. Sembower: Your Honor, I object to those as not being related to this matter.

The Court: I think that is going too far afield. Sustain the objection.

Q. (By Mr. Tuttle): Then your son was involved in some juvenile difficulties?

Mr. Sembower: Your Honor, I object to that strenuously. I think that has nothing to do with it.

(Testimony of Miles H. Robinson.)

The Court: Yes, I will sustain the objection to that.

Q. (By Mr. Kimball): Dr. Robinson, if you don't hear me from this position let me know and I will try to make myself audible. I know the conditions are bad. I believe you introduced [1118] here what you said were case records that pertained to the Brooks and the Edwards family, is that correct?

A. Yes.

Mr. Kimball: Could I have those? I think they are 269 and 270. I don't see them here.

Q. Doctor, I hand you what has been introduced here, I believe, or identified at least, as 269, 270, 271 through 276.

The Court: They have been admitted in evidence.

Mr. Kimball: Thank you.

The Clerk: Yes.

Q. (By Mr. Kimball): Doctor, I notice on one of these, being number 276, that it is labeled Mrs. Mike Lepiane. I will show you this and ask you what connection that party has with the Brooks family?

A. Well, to the best of my recollection, this is a child—let's see, wait a minute. Well, this may have no relationship to this controversy. You see, there was a Bill Lepiane and I guess I picked another folder here which probably—I am not too clear on the relationship of all these people, but I don't—let's see, I suppose this might be the sister-in-law of Bill Lepiane. Probably got in here because

(Testimony of Miles H. Robinson.)

I was trying to get all the records of all the relations together.

Q. Will you quickly go through the rest of these files and [1119] tell me if there are any others there that are not members of the immediate family of Brooks or Edwards?

A. Would you mind defining "immediate family" for me?

Q. Well, what you considered the immediate family, Doctor.

A. Well, I don't generally use that term.

Q. Well, for what purpose were these introduced, then?

Mr. Sembower: Well, your Honor, the purpose of introduction, the testimony speaks for itself. We have put in a few of his case folders which we thought might be pertinent and we have here a whole trunkful of the rest of them that we didn't clutter up this record with at all. I don't see how the witness knows what they were offered for.

The Court: Well, that isn't a proper question, what they were offered for. I think counsel offered them here and they were admitted without objection.

Mr. Kimball: I don't want to get on a side issue, your Honor. My point is to ascertain whether these were immediate members of the family which he has testified about.

The Court: Are the Lepianes related to the Edwards or the Brooks in any way?

(Testimony of Miles H. Robinson.)

Mr. Sembower: They are. Your Honor, I may have picked up a stray folder. I hate for the witness to be charged with handing a stray folder in.

The Court: I notice you have introduced in evidence four Lepiane files. There must have been some reason for that. [1120]

Mr. Sembower: There may have been. The Lepianes are in-laws, and you will recall the baby sitter with the child was Mrs. Lepiane.

The Court: Oh.

Mr. Sembower: Who is the sister of Mrs. Edwards, and that was over at the Brooks home, so I may have picked up that because I wanted to expedite matters and have every folder identified and ready to go.

The Court: They are related in some way, in what way you just don't know, Doctor, is that the situation, to the Edwards and the Brooks?

A. Yes, your Honor, I am confident they are related.

The Court: I see. But you don't just know what the relationship is? A. No, I don't.

Q. (By Mr. Kimball): Doctor, you are not maintaining, then, that all the files here pertain to closely related families? By closely related, I mean living in a common household or something of that nature?

A. You mean am I maintaining that all these people lived in the same house?

(Testimony of Miles H. Robinson.)

Q. Yes, I am asking if you are maintaining that?

A. Well, I know they don't live in the same house.

Q. That is the only answer I want, thank you.

And from your knowledge of the family, Doctor, would [1121] you be able to say whether or not they all maintained separate households? And by that I will be more specific, did Mr. and Mrs. Brooks have their own house and live in it?

A. Well, I don't know whether it was their own house or not.

Q. Well, did they have a home of their own?

The Court: Separate establishment where they lived?

Mr. Kimball: Yes, your Honor.

A. Well, that has been a confusing thing to me. They lived in about five different homes over the years about around this time and I was never just too clear who lived where.

Q. Well, Doctor, did you know whether anyone else lived with them?

A. Well yes, the other members of the family did live with them.

Q. What other members of the family lived with them, with the Brooks?

A. I was never too clear about that.

Q. Did you know that any other member of the family lived with the Brooks?

A. Well, yes, one of the—by the other families,

(Testimony of Miles H. Robinson.)

you mean someone with a different name like the Edwards living with the Brooks? [1122]

Q. Yes, children of theirs?

A. Well, all I know is that I would quite often find Mrs. Edwards in the Brooks' house or find the Brooks in the Edwards' house and I really didn't distinguish too well beyond that.

Q. Did you know whether or not Mr. and Mrs. Noel Edwards had their own separate home from the Brooks?

A. Well, yes, they had a separate home, but I thought you asked where they lived, or I mean where they stayed.

Q. Did you know whether or not Mr. and Mrs. Lepiane, William Lepiane, had a separate home of their own, separate from the Brooks'?

A. Well, I believe they did.

Q. How about Mr. and Mrs. Emerson?

A. May I explain?

Q Surely.

A. That last answer. The first time that I saw the Lepianes, I came to look after a child and, I think, the mother, and when I got there Mrs. Brooks and/or Mrs. Edwards was there and I wasn't too sure whether they were temporarily staying there or not. There was a great deal of temporary living of one family in the other family's house.

Q. Do you mean by temporary living, visiting or actually living in the common household? [1123]

A. Well, I really couldn't tell.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Dr. Robinson, I refer you now to the date of about June the 6th, 1950. Did you get a telephone communication on that date from someone regarding Noline Edwards, the Edwards' baby, the daughter of Mr. and Mrs. Noel Edwards?

A. Well, I would have to look at the records and, if I may say, we found a ledger sheet, I think, on the Edwards which has not been introduced and I would appreciate it—

Q. Can you answer my question first, Doctor?

A. Well, I can't answer it without the records.

Q. All right, that is your answer. [1124]

The Court: What records do you wish? Do you wish him to look at the records?

Mr. Kimball: Any records here, I am perfectly glad to have him look at them.

The Court: What records do you wish?

A. Well, the case records on the family.

The Court: Do you know what number that was?

Mr. Rosling: It has not been introduced.

Mr. Kimball: There are the case records and the day sheets and his ledgers have been introduced.

The Court: All right, if you can get them from your counsel, whatever you need, look at them and give us the date.

Q. (By Mr. Kimball): Doctor, are these the records you refer to that you would like to refer to?

A. Yes, and could I tell my counsel this?

(Testimony of Miles H. Robinson.)

Mr. Sembower: Yes, where is it located, Dr. Robinson?

A. Well, it is in that—remember, you set aside that with the yellow paper around it that we were going to try to put in some time? It has some of those, a ledger sheet of Edwards.

Mr. Sembower: You mean just one of these large sheets here?

A. One of the small ones there.

Mr. Sembower: One of the small ones [1125] there.

Q. (By Mr. Kimball): While you are looking for that, Doctor, I will hand you Plaintiff's Exhibit 303 and ask you to see if you can find a day sheet there for the day June 6, 1950?

The Court: June 6, is that, 1950?

Mr. Kimball: Yes.

A. Yes.

Q. Will you examine that, please, and from your examination see if your recollection is refreshed as to the telephone conversation? A. With whom?

Q. With anyone regarding the Noline Edwards baby? A. I don't find any on that date.

Q. Would you glance a day or two both sides and see if you can find such a memorandum?

Mr. McNichols: Might I ask a question, your Honor, of counsel?

The Court: Yes.

Mr. McNichols: Are you just trying to establish the date, Mr. Kimball?

Mr. Kimball: I wasn't trying to establish the

(Testimony of Miles H. Robinson.)

date; I asked if he had a telephone conversation. I wanted to see if it reflects in his records.

Mr. McNichols: Oh, I see. I see your point. Well, that is fine. [1126]

A. Yes, but it is not on June the 6th, it is on June 9th.

Q. (By Mr. Kimball): June 9th. What is shown, Doctor?

A. It says here, "Mr. Noel Edwards' baby No-line, poisoning, RX," which means treatment, "\$1.50."

Q. Now, with that refreshing of your recollection, do you remember whether or not you had a telephone conversation regarding the child?

A. Well, it is five years ago, but I probably—well, I remember I had several telephone conversations about this time about that baby.

Q. That is all I am trying to get out, Doctor. You do remember the telephone conversations. Who were they with?

A. I couldn't tell you as far as to just which woman member of the family it was.

Q. Do you think it was the mother?

A. Well, do you mean do I think it was now or did I think it was then?

Q. Now?

A. I don't really know, but I think that they have testified it was some aunt of the child.

Q. Did you have more than one telephone conversation on June the 9th, or whatever that is, pertaining to that baby?

(Testimony of Miles H. Robinson.)

A I had either one or two and I—yes. [1127]

Q. Doctor, while we are on that subject, did you make an entry of that charge for that service?

A. Well, yes, it is right here in my handwriting.

Q. I mean in your ledger, would that be reflected on your ledger?

A. Well, that is what I was mentioning to Mr. Sembower.

Mr. Sembower: I have some miscellaneous sheets. A. One of these.

Mr. Sembower: Which we had in a packet of things that we had overlooked introducing in evidence. We didn't put them in for fear they would obstruct the record, but I will hand you these and ask the Doctor if he knows what they are. I, frankly, do not.

A. This is a collection of some of my patients that I thought that their ledger sheets would be brought up during this lawsuit, and it was in a special collection, and among them is the ledger sheet on Mr. J. Noel Edwards and it is in the same handwriting exactly as to all the other ledger sheets, which is Betty Newell's handwriting.

Q. And should it be a part of Exhibit 304-A and B which have been introduced?

A. Yes, it should be.

Q. Have you taken it out of this group?

A. Well, it was not intentional. As I say, I culled through [1128] that whole bunch trying to never dreamed we would put in the whole batch, and pick up ledger sheets I thought might be used. I

(Testimony of Miles H. Robinson.)

I told Mr. Sembower several days ago that I had found this thing and this is it.

Q. May I see the ledger sheet you refer to?

A. Yes.

(Document handed to counsel.)

Q. Doctor, what does the symbol that you have preceding, that RX, stand for?

A. It says, "Dau."

Q. No, the RX I am referring to, what does that refer to?

A. Well, RX is an abbreviation commonly used by physicians for treatment. It is used on prescriptions and we also use it for treatment.

Q. It is used mostly for prescription and treatment?

A. Yes, it is that way all through my notes.

Q. Now, Doctor, will you please turn to your patient chart, whatever you call them, for Noline Edwards and tell what entries you made regarding the professional treatment of the child in this case? I expect you can pick this out quicker than I can.

The Court: Shouldn't this sheet be in evidence?

Mr. Sembower: These should be inserted in those papers wherever we can put them in.

Mr. Kimball: I didn't know these weren't complete, [1129] your Honor.

Mr. Sembower: Nor we.

Mr. Kimball: I am not inferring that you did.

(Testimony of Miles H. Robinson.)

Mr. Sembower: Nor did we, and we had no occasion to introduce these in evidence. It just didn't come to my attention, but they are a part of these and should be placed in with them.

Mr. Kimball: We would like to examine them.

The Court: Yes, I think opposing counsel should be present when you do it during the adjournment or recess.

Mr. Sembower: Yes.

A. I have the record, Mr. Kimball.

Q. (By Mr. Kimball): Read what it says, please, Doctor.

A. "Noline Edwards, granddaughter of Mrs. Brooks, raised swelling right lid and yellow spots, conjunctiva." It is my abbreviation for that.

Q. Excuse me, is this pertaining to the dollar and a half deal?

A. No, it is pertaining to Noline Edwards.

Q. Well, I didn't state my question correctly, I am referring to the treatment for which you charged a dollar and a half.

A. So far as I know, that was never written up in my notes.

Q. You had a chart on her at the time?

A. Yes, but I frequently don't make notes on them. [1130]

Q. Doctor, as I recall your testimony last week, I thought you testified that you had made a charge for this service partly based upon the reason that you had found that the Lepianes' account was a slow account, they owed you about \$40.00, or some-

(Testimony of Miles H. Robinson.)

thing to that effect. Will you tell me what you said regarding that?

A. Well, I couldn't tell you exactly what I said. I can tell you what the facts are.

Q. Tell me what the facts are, then, please.

A. Well, I would like to look at the ledger sheets, if I could.

Q. Sure.

A. The reason I have to take a little time is because sometimes, I mean, that might be shown in the ledger, I suppose it would, but there might be a note in my notes on these people. Which party was it?

Q. Well, I understood you to say that the Lepianes had owed you an account of \$40.00.

A. There are two Lepianes.

Q. Well, you tell me, Doctor, you are more familiar with that than I am.

A. Well, I only find Mike Lepiane's in here, and my recollection is that the ledger sheets on the other Lepianes are in my dead file of ledger sheets, and I further recall that there was a very slow payment there, [1131] which I felt was not justified, and I think it did color my feeling a little bit, that I should charge these people something for the effort that I made on them.

Q. Those facts are not shown by the books you have there, though, Doctor?

A. They don't seem to be. I would be glad to look through the whole ledger. There may be a

(Testimony of Miles H. Robinson.)

sheet misplaced, but I don't find it in the alphabetical place.

Q. Maybe you can do that at recess.

Doctor, tell us again, if you will, please, of the advice that you gave by telephone in one or more of the conversations pertaining to the Noline Edwards child re the dollar and a half charge.

A. Well, I received this telephone call from a quite excited lady and she said, "My little girl—" I believe she said the little girl and I don't know if she said "my" or not—"has swallowed some candy sulfa and what should we do?"

Well, I said—I mean, this is just the summary of it—I said, "Make her vomit," and I told her three different ways to make the child vomit, and I said, "If that doesn't work, get in touch with me and we might have to take her to the hospital, and in any case we will see what to do next." Now, that was the first conversation [1132] and I just can't say if I ever had a second conversation or not with her. I halfway feel that I did and that she said everything was all right, but in any case, I tried to call two or three times and was unable to reach any member of the family. I was quite concerned when I didn't hear from them.

Q. Doctor, I will hand you what has been marked as Plaintiff's Exhibit 10, which has been referred to here as the complaint that Mrs. Noel Edwards made regarding the dollar and a half charge, and ask you to glance through it and tell the Court what parts you would agree with as being

(Testimony of Miles H. Robinson.)

a true account of the affair and what parts you disagree with

I will take these if you are through with them.

The Court: That is Exhibit 10, isn't it?

Mr. Kimball: Yes.

The Court: All right.

A. Well, it seems to me that the date is off, to begin with. It says June 3rd, 1950, and I have just discovered from my records—in fact, I never looked at this thing until this day since I wrote it down, I don't believe—that it was June 9, 1950.

Now, it says here the baby swallowed a box of Ex-Lax pills, and I don't know what the baby swallowed, but I know what they told me, that it was sulfa. If I [1133] restrict myself to what I know is true and what I know is not true, I mean there are a lot of things in here that I don't know one way or the other.

Q. Go right ahead and state those, too.

A. Pardon?

Q. State those, too, if you don't have a definite recollection.

A. Well, it says here, "age two." I don't know how old the child was exactly.

Q. Was it about right?

A. Well, probably sounds about right. It says she works for a dentist in Walla Walla, and I know at one time she did work for a dentist.

It says her daughter is cared for by Mrs. Edwards' sister. Well, I don't know who it was being cared for by.

(Testimony of Miles H. Robinson.)

It says the sister called me. Well, I don't know what woman it was that called me for instructions.

And the doctor instructed her to induce vomiting either with salt water or running her finger down the baby's throat. Well, that isn't quite what I said. I said tickle the baby's throat, because that is a simple, cheap and harmless way to make her vomit. And if that doesn't work, give her mustard and water. If that doesn't work, I may have said salt water, which is another method. [1134]

Now, it says, "He stated that it was serious." Well, I don't know if I used that word, but I said, "It is important to make this child vomit."

And it says, "He would send immediately a prescription." Now, I recall nothing about sending any prescription.

It says if the prescription did not work, it would be necessary to take the baby to the hospital and have the stomach pumped. Well, I don't recall that at all, because I told them if the vomiting doesn't work we might have to take her to the hospital.

It says the sister induced the vomiting. I can't testify to that.

It says she called me again, and I really don't recall that. I don't recall that telephone call. All I recall is trying to get them.

It says the doctor stated, "Oh, dear me, I forgot all about the prescription." Now, I don't recall any such thing as that.

"He then advised the use of Epsom salts." Well, now, that makes me think that I did reach them on

(Testimony of Miles H. Robinson.)

the phone the second time, because I think I remember I told them to take Epsom salts after the vomiting.

She says here, "Received a bill from the doctor for a dollar and a half." I suppose she did, I don't know. [1135] The girl sent those out.

It says, "She inquired from the doctor's nurse and was advised that it was for the prescription." Well, I really don't know what my nurse told her.

"When told no prescription was sent, the doctor stated it was for a telephone call." Well, I never talked to Mrs. Edwards in the office about this. My nurse may have told her that, but I couldn't tell you.

It says, "Mrs. Edwards' husband refuses to pay the bill on the grounds the doctor did not perform the services he stated." Well, I never could understand why they didn't pay the bill.

"And for the further reason that if the sister had waited for the prescription, the doctor's failure would have been serious." Well, I don't—I mean I don't agree with that because a prescription was not in this treatment.

"The above statement was given to me on 8-29-50." I don't know that.

Now, in the margin it says here written in handwriting, "Discussed with Dr. Robinson 9-23-50. Admitted he might have told the patient he forgot the prescription." Well, I don't remember anything about forgetting any prescription. That was Ralph

(Testimony of Miles H. Robinson.)

Stevens when he stopped me on the street on this matter. [1136]

Q. Let me interrupt you there. Might you have said something about the prescription, a prescription? I am not asking if you did or didn't, but might you have?

A. Well, when you are practicing all day and dealing with prescriptions all day, why, that is conceivable that I might have put it off on some such basis or something like that, I don't know.

It says, "He called several times and the child had been moved from one home to another." Well, I know I called several times, but I don't know—and I couldn't reach the family, and I have learned since that they were moving from one house to another, but I don't know that myself.

Q. What you are reading now is Dr. Stevens' notes on the edge, are you not?

A. Well, I have been told these are his notes on the edge.

Q. They are not part of the typed-up complaint?

A. No.

Q. Then, doctor, would you concede that there might have been some basis for Mrs. Edwards, rightly or wrongly, to have had some misunderstanding regarding your dollar and a half bill?

A. Well, I think she wrongly had a misunderstanding, yes.

Q. Do you think she had any basis for even a wrong understanding? Was there anything that she might have been [1137] mixed up about?

(Testimony of Miles H. Robinson.)

A. Well, obviously, she was mixed up.

Q. Do you think there was anything from what you told the baby sitter or somebody else that could have been confused by them relative to prescriptions? A My directions were simple and clear.

Q. Doctor, in your testimony in this case, didn't you say:

"Q. Was there any conversation between you and the caller with respect to a prescription?

"A. I think there was a conversation there about the prescription."

Isn't that what you testified to in this case the other day?

A. Well, as I say, I don't remember exactly about the prescription, if any. I think this, that the child—it seems to me when I talked to the mother the second time, the child was not feeling well and was crying or something of that kind, and I may have said something about a prescription for the child, paregoric or something like that, but I really can't tell you anything more. It just wasn't a part of the treatment.

Q. Doctor, if you did say something about a prescription and none was sent, can you conceive that that might have been the basis of a complaint by Mrs. Edwards?

A. Well, I am really in the dark about the complaint [1138]

Q. When you sent the bill for a dollar and a half, was it a single item or was it included in a larger bill sent to the patient?

(Testimony of Miles H. Robinson.)

A. Well, I didn't send out the bills and I couldn't tell you to this day.

Q. You don't know?

A. Well, the record will probably show how it went out.

Q. Well, you don't know, is that your answer now? A. No, I don't know.

Q. Would your records show whether the charge was made for a prescription or for other professional services?

A. Well, I think I read the record of my day sheet, that it was for treatment.

Q. Well, I am not getting the answer I was asking, getting a reply to the question. I am trying to ask you, do your records here show whether or not the charge you made and for which the Edwards were billed was for a prescription or for other services rendered?

A. Well, I would like to see the record again, I think.

Q. Which record?

A. It is those big day sheets.

Q. Sure.

(Documents handed to witness.)

A. All it says here is "Mr. Noel Edwards," and I might say we always put the person who pays the bill first, at [1139] least that was Betty Newell's policy. It says here, "Mr. Noel Edwards' baby, Noline, poisoning, RX," which in my sign language meant poisoning treatment, "\$1.50."

(Testimony of Miles H. Robinson.)

Q. That is what you said was medication or prescription, was it not?

A. Well, it could be either.

Q. All right. A. It is whatever I did.

Q. Doctor, when did you first learn that Mrs. Edwards or any member of her family was unhappy about the charge of a dollar and a half?

A. When that letter of September 30, 1950, landed on my desk.

Q. September 30, 1950?

A. I think I have the date right.

Q. I am not trying to quarrel with you, but hadn't you talked to Dr. Stevens a few days before that?

A. Yes, you are quite right. I really first learned about the complaint on the 23rd of September when I talked to Dr. Stevens on the street.

Q. And on that occasion when you talked with Dr. Stevens on the street, did he state to you that Mrs. Edwards had made a complaint over a dollar and a half charge?

A. Well, in substance, he did.

Q. Doctor, did your nurse—you told me her name, but I have forgotten, Betty [1140] someone—

A. Betty Newell, at that time.

Q. Newell—at any time between June the 6th, 1950, or June the 9th, 1950, and August the 29th ever report to you that Mrs. Edwards was in the office inquiring about the bill and why the charge was made?

(Testimony of Miles H. Robinson.)

A. I don't remember any such conversation.

Q. Would you say that she hadn't been?

A. Well, that is pretty hard, because she talks to me—she talked to me frequently about things. I just don't remember any complaint like that.

Q. When Dr. Stevens and you talked on this matter on the 23rd of September, did you make an explanation to Dr. Stevens of what you thought might have happened and what you did?

A. Yes.

Q. Did you deny that there might have been some element of prescription involved?

A. Well, I think he said something about a prescription and——

Q. My question was, did you deny that, Doctor?

A. I am just trying to get the negative straight. Could you put that in a different way?

Q. Maybe I can. Did Dr. Stevens state there was an element of prescription not being sent in the Edwards' complaint?

A. Well, I think he probably did.

Q. And did you deny that? [1141]

A. Did I deny that there was an element of prescription?

Q. Yes.

A. Oh, well, I told him that that was not the issue.

Q. What did you tell him was the issue?

A. Well, that the child had swallowed some poison and I told them how to make the child vomit

(Testimony of Miles H. Robinson.)

and, as far as I know, the child vomited. I never heard anything more about it.

Q. Did you understand, Doctor, at that time in your conversation with Dr. Stevens that he, Dr. Stevens, was talking to you as chairman of the grievance committee of the Walla Walla Medical Society?

A. Well, I think I did understand that by the time we got through the conversation, yes.

Q. As a matter of fact, Doctor, didn't you more or less resent Dr. Stevens mentioning the subject to you at all? A. Yes, I did.

Q. Did you as much as say that it was none of his business or the grievance committee's business what you charged the patient or what your relations with the patient were fee-wise?

A. Well, I don't think that is a complete statement of what——

Q. I didn't mean it to be a complete statement, I was trying to summarize it. If it isn't a complete statement, tell [1142] me what you did tell the doctor, Dr. Stevens?

A. Well, I said, "I have done a sensible thing with this patient, I have charged them a very small fee for my time, which was at least a half an hour with all those phone calls and a little puzzling over it and what not——" and it might not have been half an hour, but somewhere around there—and I said, "I have heard nothing from the family since and now out of a clear sky you are telling me that the family should not pay the bill, and," I said, "I

(Testimony of Miles H. Robinson.)

don't think that you have any right to do that and I don't like this secret committee and I just don't think it is the right thing to do."

Q. You knew Dr. Stevens was chairman of the committee?

A. I believe he announced that. He stopped me on the street and he said—I think he said, "I am chairman of this new grievance committee and we got a little complaint here and we think that you should forget the bill." He said that before I could even explain what had happened.

Q. Well, then, it wasn't a secret grievance committee as far as he being chairman of it was concerned?

A. Well, it became unsecret right then.

Q. Yes.

A. Until that time, I didn't know who was on it. [1143]

Q. Did you also charge Dr. Stevens with improper professional conduct on his part?

A. Well, as I said the other day, I said, "Well, now, look, Ralph, why don't you look at the mote in your own eye? You are up there making a lot of money off of glasses, which you know is highly unethical, and here you are bothering me about my miserable little dollar and a half fee." Yes, I did tell him that.

Q. Now, Doctor, I want to separate my questions at this point, if I can, into two general categories. I want to find out from you what you did about the Edwards' complaint when you received

(Testimony of Miles H. Robinson.)

a copy of the letter from Fullerton on September 30, 1950, and then later as to a separate group of questions, I want to examine you relative to the Brooks' complaint, so I make that explanation to kind of point out what I am getting at.

Doctor, you testified that after getting the letter of September 30th, you wanted to contact the Edwards family and see why the complaint had been filed and the reasons for it, is that correct?

A. Yes.

Q. Was that the only reason you wanted to see the Edwards family after getting that letter?

Mr. McNichols: Your Honor, I am going to raise an objection on that on the basis we are repeating on Mr. Tuttle's [1144] coverage.

Mr. Kimball: I will cover it just as fast as I can.

The Court: Well, all right, go ahead.

Q. (By Mr. Kimball): Was your answer yes?

A. May I have the question?

The Court: Better read the question.

(The question was read.)

A. Well, what was the statement before?

Q. (By Mr. Kimball): Well, I was asking you relative to your desire to see the Edwards family after getting the September 30th letter from the grievance committee.

A. Just what is your question?

Mr. Kimball: Would you read the question?

(Testimony of Miles H. Robinson.)

(The question was again read.)

A. Yes.

Q. And in that connection, Doctor, I believe you testified you went to College Place on or about the 3rd or 4th to see the Edwards at their residence and found no one there on the first occasion, is that correct?

A. I went to see them and it seems to me I had some difficulty finding them at home.

Q. Were you told by the neighbor, a Mrs. Nadine Powers, that they weren't home?

A. Well, I don't know Mrs. Nadine Powers and I don't particularly recall being told anything about it. [1145]

Q. Next, let me ask you, Doctor, if you did not on or about the 5th of October, 1950, again make a personal trip to the Edwards' home at College Place and on that occasion see Mrs. Edwards and I think you said Mrs. Brooks?

A. All that I remember——

Q. Just answer the question, if you can, please, Doctor.

A. Well, I can't answer it unless I just tell you that all I remember is one call that I made on the Edwards in College place.

Q. Would that be the call that I just referred to when Mrs. Brooks was there?

A. Well, it seems to me the record, my ledger sheet there, shows that call on, I think it is, October the 5th.

(Testimony of Miles H. Robinson.)

Q. Well, you testified about it before. Is that the call when Mrs. Brooks paid her bill?

A. Yes.

Q. All right. Now, is it not a fact, Doctor, that you again made another trip to see Mr. Edwards?

A. I don't recall that.

Q. I will refresh your recollection. Do you remember meeting Mrs. Edwards at the porch where she greeted you? A. I don't remember that.

Q. You don't remember calling after working hours, knocking on the door, and being greeted by Mrs. Edwards at her front door? [1146]

A. I remember being greeted by Mrs. Edwards when I went out there, but on that one occasion.

Q. Just the one occasion, no other one?

A. I don't recall any other occasion.

Q. And are you quite sure of your recollection in that regard, Doctor?

A. Well, as sure as I can be.

Q. I believe you testified that when you saw Mrs. Edwards at the call, you do remember you asked about the grievance that she had had and filed and you had a more or less friendly talk about it; is that a fair summary? A. Yes.

Q. And that was the reason you had gone out to see her?

A. Well, you said is that a fair summary; I don't think that is a fair summary.

Q. Well, you had a friendly talk with her about this grievance matter, this dollar and a half that she had filed a complaint on, did you not?

A. Yes.

(Testimony of Miles H. Robinson.)

Q. And you said that was the only reason you went out to see her, did you not?

A. That's right.

Q. In other words, there would have been no other occasion for you to go out again, would there? [1147]

A. Pardon?

Q. There would have been no other occasion for you to go out again, would there?

A. Oh, yes, she said that she would get this letter and let me know and let me see this letter. And that is why I called her husband later in the week, I hadn't heard from them.

Q. And you didn't see her again?

A. Well, I don't remember it.

Q. Do you remember offering to take her to the post office to pick up the letter?

A. Well, I don't think I did.

Q. Would you say you did not?

A. Well, I don't know as I would say that, either. I don't believe they had a car and I think the question came up about this letter and that may have been mentioned.

Q. Maybe this will refresh your recollection: Did she explain to you that it would do no good because the post office was closed at five or six o'clock? Does that refresh your recollection?

A. All I remember is that she said they didn't get their mail at the house and there was something about the post office problem of how they got their mail.

(Testimony of Miles H. Robinson.)

Q. Doctor, on the 6th, then, you don't remember going out to the Edwards home again on this matter? [1148]

A. No, I don't. I do remember that I had trouble finding them and I may have been out there in College Place twice looking for them.

Q. Going on to Saturday of that week, do you remember whether or not you went up to the place of employment of Mr. Edwards, that is, the Singer Sewing Machine shop in Walla Walla, and inquiring for Mr. Edwards personally on Saturday morning?

A. Well, I recall seeing Mr. Edwards.

Q. If you can't answer my question, then give any explanation you wish to. Do you recall that? Answer yes or no, please.

A. Well, you have in there the date and the place.

Mr. Kimball: Will the Court please instruct the witness to answer my question?

The Court: You should answer the question or say you can't, then give the reason why you can't.

A. Well, I don't remember.

Q. (By Mr. Kimball): Do you recall, Doctor, whether or not you went to the Singer Sewing Machine place of business again, a second time, on Saturday morning, the 2nd of October, and inquired for Mr. Edwards?

A. I don't recall that.

Q. You do not recall. Would you say you didn't?

A. I don't think I did. [1149]

(Testimony of Miles H. Robinson.)

Q. Did you see Mr. Edwards on Saturday morning?

A. Well, that is the problem. I talked to Mr. Edwards on Friday or Saturday.

Q. I am referring to Saturday morning, If I didn't make that clear?

A. Well, I couldn't tell you really for sure what day it was.

Q. You say you did see him, then, Friday or Saturday?

A. I think I saw him, but I couldn't swear to it. I talked to him.

Q. Where do you think you saw him, Doctor?

A. Well, you see, I talked to him about this matter and I think it was on the phone.

Q. You think it was on the telephone and not personally?

A. Well, I am just really not sure.

Q. Doctor, on Saturday afternoon, did you go out to the Brooks' home and ask for Mr. Tom Brooks, inquiring actually of Mr. Emerson, his son-in-law?

A. Well, I know—I wouldn't say that I did.

Q. Would you say you didn't?

A. Well, I tried to contact Tom Brooks and I talked to him, but—well, let's see. I only talked to him on the phone, so I am quite sure I didn't go out to his home.

Q. You are quite sure you did not go out and inquire of him and where he was? [1150]

A. Yes.

(Testimony of Miles H. Robinson.)

Q. And on the evening of the same day, Saturday, the 7th, I believe you testified you made your first call to Tom Brooks, correct?

A. Well, I talked to him on Saturday, I remember that. I wouldn't say whether it was evening or not, I don't recall.

Q. I thought you told us you telephoned from home and it was your recollection it was in the evening?

A. Well, it probably was in the evening, then, because I did call him from home.

The Court: Time for afternoon recess, ten minute recess.

(Whereupon, a short recess was taken.)

Mr. Kimball: Would the reporter read the last question and answer, please?

(Whereupon, the said question and answer were read.)

Q. Dr. Robinson, did you take up with Mr. Brooks on the occasion of this first telephone call to Mr. Brooks the question of the Edwards' letter or the grievance committee's letter?

A. Well, it came up in the conversation, yes.

Q. Did you bring it up?

A. Well, I don't know just which one of us brought it up.

Q. Well, the letter was addressed to Mr. Edwards, I [1151] believe, was it not?

A. Yes. Well, I think so. Mr. or Mrs. Edwards.

(Testimony of Miles H. Robinson.)

Q. Mr. or Mrs. Edwards. Well, would you have probably brought it up? Why did you call Mr. Brooks that night?

A. Well, I had expected to see him in the office.

Q. Well, Doctor, how many times had Mr. Brooks been in your office?

A. Well, several times.

Q. Several, how many?

A. I couldn't tell you exactly.

Q. More than the two times you have testified to?

A. Well, I think he came in with his wife a number of times.

Q. You think he came in with his wife a number of times. As a matter of fact, didn't Mrs. Brooks' daughter usually come in with Mrs. Brooks, Mrs. Enid Emerson?

A. It seems to me she did.

Q. Do you remember ever having Mr. Brooks in your office for medical purposes except the two occasions you testified to when you took blood samples?

A. Well, those are the two I remember where he came in for treatment of himself.

Q. And that was from the period in March until this date on October the 7th, 1950?

A. Well, it started in February, around February 7th, something like that. [1152]

Q. All right, with that in mind, what did you call Mr. Brooks about that night?

A. Well, I called him about the old problem that I had had with him.

(Testimony of Miles H. Robinson.)

Q. Did you call him about the letter?

A. That was not the main subject of the conversation.

Q. Will you please answer my question? Did you call him about the letter? A. Why, no.

Q. Your testimony is you did not call him about the letter? A. That is right.

Q. When you had him on the telephone, did you ask him about the letter?

A. Well, we discussed the complaint and the letter.

Q. Why did you take it up with Mr. Brooks?

A. Well, Mr. Brooks, he is the head of the family.

Q. The head of the family. Explain your answer, please.

A. Well, I would say that he was the dominant member of the clan.

Q. Dominant member of the clan. Were his children all patients of yours?

A. I don't know just how many of his children and grandchildren were. I added it up once and I think there were seven of them.

Q. Well, Dr. Robinson, I will put my question this way: Were [1153] all of the children of Brooks that you knew of grown and adults?

A. Oh, I think they were.

Q. And as far as you know, did they all have their own homes?

A. Well, I really didn't know too much about their homes.

(Testimony of Miles H. Robinson.)

Q. Did you know that they were all married?

A. I didn't know.

Q. You didn't know? A. No.

Q. You had been in the Brooks' home?

A. Yes.

Q. Did you express to Mr. Brooks on that occasion that you wanted to see the letter that was written to the Edwards'?

A. No.

Q. You didn't?

A. I said to him that, "Your daughter had told me she was going to let me see this letter."

Q. Why would you mention that to Mr. Brooks?

A. Well, because she was his daughter.

Q. Did you want him to do something about it?

A. Well, there were really two propositions afoot: One was whether he was going to come in and get his tests made and his treatment, and the other was the family had told [1154] me out in College Place that they were going to show me this letter.

Q. And you hadn't seen Mr. Brooks since early in May professionally?

A. Oh, I couldn't say when I last saw him.

Q. Do you have any reason to believe you saw him after May 5th, I believe you said you took the blood sample?

A. Oh, I know I saw him after that.

Q. Professionally?

A. Well, I would go out to the house and he would be there with his wife.

Q. You didn't go out to see him, did you?

(Testimony of Miles H. Robinson.)

A. No, not particularly. Principally treating his wife.

Q. Doctor, did Mr. Brooks on that occasion and in that conversation, Saturday evening, tell you that he didn't know anything about the letter?

A. Well——

Q. Answer, if you can, yes or no. Then give your explanation, please, Doctor.

A. No, he didn't tell me that.

Q. Did he tell you he did know something about the letter? A. He was rather——

Q. If you can, I don't want to be cross.

A. Yes.

Q. What did he say he knew about the letter? [1155]

A. I said to him, I said, "Your daughter has made this complaint against me and I would like to explain to you my position on the matter," and I told him the same thing that I had told the Edwards.

Q. Well, did Mr. Brooks tell you that he knew anything about the letter?

A. Mr. Brooks just didn't say yes or no on that subject directly, but then he gave me to understand that he knew all about it.

Q. What did he say that gave you to understand that, Doctor?

A. Well, he said—the Spokane business was the main thing he said. He said, "Well, I told my daughter in Spokane not to pay a bill," and he said something then inferring to me that he had encour-

(Testimony of Miles H. Robinson.)

aged his daughter in what she done, but he didn't say so in so many words.

Q. Did he say in so many words that he had seen the letter?

A. No, he didn't say that. At least, I don't think he did.

Q. Did you state to him that you considered it a mysterious situation that the letter hadn't been delivered or you had been told it hadn't been delivered?

A. Yes, I said, "This is rather peculiar."

Q. On all these occasions where the letter was discussed, did you have reason to question the fact that the letter had not been delivered and received by the Edwards? [1156]

A. Well, after that first visit over in College Place I really felt they were not telling me the truth. I felt that they were just making a mystery out of the thing and kind of playing a game with me.

Q. Well, Doctor, did you know that Mr. Edwards was regularly employed?

A. Mr. Edwards?

Q. Mr. Noel Edwards? A. Yes.

Q. I will ask you, did you know that Mrs. Noel Edwards was regularly in full-time employment?

A. Well, just a minute. I think Mr. Edwards worked for the Singer Sewing Machine, but I don't know whether he was regularly employed or what his arrangement with them was.

(Testimony of Miles H. Robinson.)

Q. What about Mrs. Edwards, did you consider she was regularly employed?

A. Well, at one time she worked for Dr. Smethurst, but I don't know whether it was at this time or not.

Q. Didn't they tell you they were both employed during the daytime and that was the reason they couldn't get their mail?

A. Well, there was something said of that nature.

Q. But you questioned it?

A. No, I didn't question it, I was just——

Q. Excuse me. [1157] A. Go ahead.

Q. I interrupted you, Doctor. Please go ahead.

A. Well, I was just surprised that anybody would not get their mail oftener than once a week. I was inclined to think that was not a plain, true statement.

Q. Doctor, on Sunday morning, the 8th, following this Saturday night conversation that we have just been talking about, between the hours of 7 and 8 in the morning, a.m., did you again telephone Mr. Tom Brooks at his residence?

A. Oh, I telephoned him Sunday morning, but I couldn't give you the time.

Q. Would that time sound about right to you?

A. It sounds a little early to me.

Q. Well, what time do you think you called, if you know?

A. Well, I think it was around 8.30, maybe 9 o'clock.

(Testimony of Miles H. Robinson.)

Q. Did you again state to Mr. Brooks, among other things, that you wanted to see the letter from the grievance committee to the Edwards?

A. I certainly did not.

Q. Now, Doctor, I am going to ask you this: Did you not tell Mr. Brooks on that occasion, that is, the morning of Sunday, the 8th, that unless he, Tom Brooks, as head of the household, procured for you the original letter sent to the Edwards, sent to Mr. Edwards and Mrs. [1158] Edwards, that you would reveal the physical ailment of Brooks and his wife, who were your patients? Did you not do that?

A. I did not.

Q. Did you say that you would turn them over, turn their cases over, to the public health authorities?

A. Now, I told Brooks that and I am just trying to place the time. Yes, it was on Sunday.

Q. And you deny that you told him you were going to tell any member of their family about their physical condition?

A. Deny what?

Q. Do you deny that you told him you were going to expose his physical condition and that of Mrs. Brooks to other members of the family?

A. No, I never told him that.

Q. You are very sure of that?

A. Positive.

Q. Did Mr. Brooks, in reply to something you said to him, by his talk or manner indicate that he construed you had threatened him?

A. Oh, yes, he called me back.

(Testimony of Miles H. Robinson.)

Q. No, I mean on this occasion, Dr. Robinson, on the first phone call?

A. Well, in one of those two phone calls on Sunday, yes, he said, "You are threatening me." [1159]

Q. Was that the first phone call, Doctor?

A. Well, I am not just too sure. He was pretty abusive in both phone calls.

Q. Pretty abusive. Well, what was he abusive about in the first phone call?

A. Well, you see, I called him back on Sunday—

Q. No, please, Doctor, I am talking about—oh, excuse me, you mean the first phone call on Sunday?

A. Yes.

Q. All right, that is what I want.

A. Well, I called him back on Sunday and I said, "I have been thinking over what you said last night about you having a negative Wasserman when you came in the country and," I said, "this really brings the thing to a head. Either you take treatment or I am getting out." And I didn't say it in this severe way, I was very reasonable with the man, and I talked to him for about twenty minutes. I said, "The situation as I conceive it, is a rather urgent one and you are quite possibly contagious and your children or any contacts you might have might catch this condition and I will be held responsible." [1160]

And so I said, "You either come in or I will just have to terminate my relationship with you."

Well, then, he said, "You have been experiment-

(Testimony of Miles H. Robinson.)

ing with my wife," and I was really quite surprised when he said that. He was referring to the treatment that I had given her, and when he said that, I said, "Well, I just can't talk to you any more about it," and I hung up on him.

Q. Then, there was nothing said about threats by Mr. Brooks to you?

A. Well, I also told him that, "If I retire from the case, why, I will have to turn you over to the Public Health Department."

Q. And what did he say?

A. Well, maybe that is when he said I was experimenting, I don't know, but that was all that was said.

Q. Did he say anything about threats?

A. He said, either in that conversation—oh, I couldn't tell you. It was one of the two. He said, "You are threatening to expose me," and I imagine it was in that conversation, and I said, "Well, I am not threatening you at all, I am telling you what I have to do."

Q. Was that all?

A. Well, as far as I can recall, it is.

Q. And did you tell him in a nice way, as you say, that you [1161] would have to also tell other members, responsible members, of his family?

A. I never told him I would have to tell them.

Q. Did you ever tell them you would?

A. I never did.

Q. Actually, Mrs. Enid Emerson, an adult

(Testimony of Miles H. Robinson.)

daughter, had come in with her mother regularly or at regular intervals, had she not?

A. Well, one of the daughters had, I couldn't tell you which one it was.

Q. Was she not the daughter that you said you taught her to use the penicillin needle?

A. Well, I taught one of the daughters how to give the injections, yes.

A. Well, that daughter knew of her mother's condition, or your diagnosis of it, did she not?

A. Well, yes.

Q. Did you consider her an adult member of the family?

A. Well, yes, she was a grown young woman.

Q. And she already knew of the fact regarding her mother and father?

A. Well, I assume so.

Q. Why did you assume, then, doctor, that you must tell someone else in the family?

A. I didn't assume that I must tell them, I thought that it [1162] would be proper for them to know. As a matter of fact, I was inclined to think they probably did know.

Q. And you are saying, your testimony now is, you didn't tell Mr. Brooks that you would tell other members of the family of his and his wife's physical condition? A. Oh, no.

Q. On any occasion?

A. I never told him I was going to do any such thing.

(Testimony of Miles H. Robinson.)

Q. Doctor, did Mrs. Tom Brooks ever refuse to take any treatment that you prescribed for her?

A. I don't think so.

Q. Did you find her co-operative as a patient?

A. Oh, yes, she was a very co-operative patient.

Q. Had you ever given Mr. Tom Brooks any medication of any kind for any ailment he had?

A. Well, I may have given him some minor thing, I couldn't tell you for sure.

Q. Do you have any reason to believe you gave him any medication or treatment of any kind?

A. Well, the reason I would have was that I went out to the home many times and——

Q. Just a moment, please.

A. You asked me if I had any reason to think so and I am giving you my reason.

Q. Very well, go ahead. [1163]

A. That when a doctor goes out to a home to see one member of the family, there are five or six other people, maybe, and quite often they ask for a little treatment.

Q. Well, Doctor, you have gone over your records in this matter fairly recently, have you not?

A. Well, I haven't gone over them as well as I wish I had.

Q. Haven't you gone over your records in connection with this lawsuit, preparing for it?

A. Well, I have looked through the Brooks' records, if that is what you mean.

Q. Do you find anything in your records to indi-

(Testimony of Miles H. Robinson.)

cate you ever did any medication of Mr. Tom Brooks at any time?

A. Well, I better see the records.

Q. Will you do so tonight and let me know in the morning? A. Well, they are right here.

Q. All right, will you look at them right now? Do you want the file of Mr. Tom Brooks?

A. Yes, and the ledger sheet there.

Q. I hand you first 269, which is, I believe, what you call your case record. A. Thank you.

Mr. Kimball: And, Tom, will you please hand him that?

A. Oh, I don't need those, thanks.

Q. Do you need this (indicating)?

A. Yes, I do. I appreciate that. I don't believe I have [1164] any record of treatment on him here.

Q. Do you care to examine your other records? Would that serve any useful purpose?

A. Well, I would really have to look through—it would take me probably two hours to look through the whole day sheets, but I don't recall any particular treatment of him.

Q. Dr. Robinson, referring to Exhibit 269, which is the case record you have for Mr. Tom Brooks, there is a sheet at the bottom of the file bearing the number 16, the top of which is, "Mr. T. R. Brooks, 3-9-50." Would you read what follows?

A. Well, it says "B."

Q. "B" meaning what?

A. It means blood. Says, "For Wass." And

(Testimony of Miles H. Robinson.)

then the word "belligerent," underlined, period, "early paresis."

Q. When was that record made?

A. It shows March the 9th, 1950.

Q. I think you previously testified the records were made currently. Does that mean it was made on March the 9th, 1950.

A. Oh, yes, I assume so.

Q. That was your custom and regular practice?

A. Yes.

Q. And what was the date of the first blood that was taken [1165] from Mr. Brooks?

A. May I see those day sheets?

(Documents handed to witness.)

Well, I find here in my day sheets on the date of March the 9th, 1950, "Mr. T. R. Brooks" and the letters "OC," which in our language means office call, and after that in Betty Newell's handwriting here is "self" and then a charge, \$3.00.

Q. That is the first occasion when you saw him and when you took the first blood?

A. Well, that is one of the occasions.

Q. Was that the first, Doctor?

A. I just couldn't tell you without checking all through here. I may have seen him earlier. Let me see the chart here on him.

Q. Is there something you need here, Doctor?

A. Well, I think I have it right here. Well, the report of the Kline reaction test for the disease here is dated March the 9th, 1950, and so it seems to me

(Testimony of Miles H. Robinson.)

that that was the first time I saw him, because down below here is the test sent to the State Health Department in Seattle, which says May the 5th, 1950, and I believe——

Q. Excuse me, Doctor, just go back to the 9th. The first one.

A. I am telling you just why I think this is the first time. [1166] You are asking me if it is.

Q. Yes, that's right, go ahead.

A. And so we have here below the second test on May the 5th, 1950, and since I am pretty sure we only took two tests on him, if the second one was May 5th, 1950, the first one must be this March 9, 1950, and that was undoubtedly the first time I saw him except for maybe being along with Mrs. Brooks or in his home.

Q. Doctor, when did you get the result of this first call, of this first Wasserman?

A. Well, it says here, "Test made March 10, 1950," and they go in the mail probably on the 11th and I suppose that I would have got it on the 12th.

Q. Then, Doctor, tell the Court on what basis you made your entry on the 9th that he has paresis?

A. Well, his wife had syphilis.

Q. Did you make a diagnosis of him on the basis that his wife had syphilis?

A. Well, now, just a minute. This is not a diagnosis, this is a concern that I had as to whether he might not have early paresis. That is a reminder to me the next time I saw him to look further into the matter.

(Testimony of Miles H. Robinson.)

Q. That does not tend to show, then, that you diagnosed him as having the disease on the date you made the entry?

A. No, that is a provisional diagnosis. I mean, my general [1167] policy is to put down the thing that I would fear most and disprove or prove it.

Q. (By Mr. Kimball): Doctor, from your records you find no evidence of the fact you ever gave Tom Brooks any medication or treatment?

A. No, I have no records of any treatment.

Q. And on the time of your telephone conversation with him on the 7th and 8th of October, had you seen Tom Brooks professionally since May or whenever your second blood test was in the spring?

A. That question is very hard to answer.

Q. Well, have you any evidence that you saw him or any reason to believe that you saw him professionally?

A. Well, it turns on the word, "professionally."

Q. I mean in regard to his sickness?

A. Well, yes, that is the point, I could say yes to that. I think that is a fair answer. And, if I may explain, I was seeing his wife regularly and seeing him every now and then with his wife and at regular intervals asked him if shouldn't go ahead and have something done about this, and I think that comes under the category of a professional inquiry.

Q. Doctor, the point of my inquiry is this: What new factor, if any, had entered into the situation in your relationship between Mr. Brooks and you that impelled you [1168] to feel under compulsion

(Testimony of Miles H. Robinson.)

to turn his case over to the public health authorities and reveal his condition?

A. Well, to turn it over to the health authorities was his revealing to me on that Saturday night that he had had a negative Wasserman recently, that is, when he came in the country.

Q. Did you know that they were aliens that had come into the country recently?

A. Well, I knew that they had come from England, yes.

Q. You had Mrs. Brooks' history, I think, this morning, testifying that she had had medical treatment in England did you not?

A. Yes. Oh, I knew they came from England. Dr. Campbell told me.

Q. Had you inquired about whether or not they had had blood tests on entry into the country?

A. No, it never occurred to me.

Q. Doctor, I want to ask you about one more call. There were two calls on Sunday morning, were there not, telephone calls with Mr. Brooks?

A. Yes.

Q. The second call initiated by you or by Mr. Brooks? A. Mr. Brooks.

Q. Tell me, in substance, what was the conversation?

A. Well, about twenty minutes after our last conversation [1169] on Sunday morning, he called me back and he said, "You have threatened me and will you put it in writing?"

Q. And you replied?

(Testimony of Miles H. Robinson.)

A. Well, I didn't say anything for a minute, and then I said, "Well, that is foolish." Then I hung up on him rather quickly after that.

Q. Nothing more was said?

A. I don't—well, he may have repeated himself a couple of times. I tell you he was yelling into the phone.

Q. Was he agitated and apparently excited from the tone of his voice?

A. He gave me the distinct impression that he was saying this for the benefit of people in the room where he was calling from.

Q. Well, how do you arrive at that conclusion?

A. Well, he was speaking so loudly.

Q. Well, a person might speak loudly if he were agitated or excited, might he not?

A. Yes, but he didn't seem to be so excited. He just said this in a very loud tone of voice as if he was just making an arrangement.

Q. Well, when you said that was foolish, you meant by that what?

A. I meant that the whole business was foolish.

Q. That he should ask you to put it in writing? [1170]

A. That he should ask me to put anything in writing, any time.

Q. Actually, Doctor, didn't you tell him that you would not do so, that you weren't raised that way, or something to that effect?

A. I think I did say that I was not raised that way.

(Testimony of Miles H. Robinson.)

Q. What did you mean by that?

A. Well, I meant that my father always told me, "In general, don't put anything in writing."

Q. I think that is very good advice, Doctor.

Dr. Robinson, do you deny that during the week following the writing of the Edwards' letter on the 30th of September and ending with your conversation with Noel Edwards on Monday morning, the 8th, that during that entire week you were solely and vitally interested in procuring the original of the grievance committee letter?

A. Yes, I certainly do deny that.

Q. You deny that? A. Yes.

Q. Would your denial also go to the question of receiving the original of that letter?

A. Oh, I was interested in seeing the letter.

Q. And you had expressed yourself as being interested to various members of the Edwards and the Brooks family? [1171]

A. Oh, I think so.

Q. Do you deny that you made repeated demands upon Mr. or Mrs. Edwards, or both of them, to see the letter or to have it?

A. I never made any such demands.

Q. Would your answer be different if I said requests? A. No.

Q. You deny that?

A. Well, maybe I have to explain.

Q. Go right ahead, please, Doctor.

A. The letter was a condition, became a condition by the end of the week as to whether I would

(Testimony of Miles H. Robinson.)

have anything to do with them, carry on the treatment.

Q. If I understand your statement, then, you say the letter became a condition? You meant the bringing the letter in and discussing it and showing it to you became a condition? A. Yes, it did.

Q. In other words, Doctor, if they would do that, you would go ahead with their case; if they wouldn't do it, you wouldn't, is that correct?

A. Well, I don't think it was quite that definite.

Q. What do you mean by a condition?

A. Well, what I mean is that if they came in and were perfectly frank about this business and weren't concealing [1172] mysterious letters which were criticizing me, that I expected I would take care of them.

Q. During this interim, Doctor, did you go to see the sender of the letter, Mr. Fullerton, and ask him for his statement as to what the letter contained?

A. Well, the letter was pretty plain what it contained.

Q. Well, why were you interested in seeing the Edwards' copy then?

A. Well, as I said before, I wondered, knowing Fullerton's general attitude and behavior and the kind of shifty way he dropped this letter on my desk and ran out of my office on Saturday, I kind of wondered whether he had sent them something a little more special.

Q. Well, let me ask you this question, Doctor: Did you ask Mr. Fullerton what he sent them?

(Testimony of Miles H. Robinson.)

A. I wasn't on too good terms with Mr. Fullerton.

Q. Will you answer my question, please?

A. I don't think I did.

Q. You don't think you did? A. No.

Q. Did you ask Dr. Stevens about it?

A. Well, I wasn't talking to Dr. Stevens much, either.

Q. Will you answer my question, please, Doctor?

A. No.

Q. Your answer is no? [1173] A. No.

Q. Did you phone him or make any effort to contact him regarding the letter? A. No.

Q. Doctor, I ask you now if it is your position that any member of the defendants in this lawsuit or myself had any acquaintance with Mr. or Mrs. Tom Brooks or with Mr. or Mrs. Noel Edwards at any time prior to the 29th day of August, 1950?

A. I know nothing about that.

Q. Is it your position that any of us did know them?

A. Well, I don't think—it seems to me the complaint has an allegation that the defendants—I don't know—encouraged them to make the complaint and encouraged this business.

Q. Well, then, it is your position now that none of us that I have named did any encouraging or procuring of it?

Mr. McNichols: Your Honor, I am going to object to this form of questioning.

The Court: I think this form of question is ob-

(Testimony of Miles H. Robinson.)

jectionable. It isn't for the litigant to say what his legal position is.

Mr. Kimball: I think that is correct.

The Court: In a lawsuit.

Mr. Kimball: I will accept that. [1174]

The Court: You can ask if he has any knowledge.

Q. (By Mr. Kimball): Doctor, do you know that any of us knew any of the parties before August the 28th, 1950?

A. No. At least, as far as I can determine, can think, at this moment, I don't know that any of the defendants knew these people before the day you mentioned. I don't know whether they did or not.

Q. Do you have any reason to believe that any of those persons that I have named of the defendants and myself procured or did anything toward procuring the complaint of Mrs. Edwards, which was made on August the 28th?

Mr. McNichols: Your Honor, I am going to raise an objection. I think he is going into the merits of the legal contentions here.

Mr. Kimball: I would like to find out the merits of this lawsuit, your Honor. I think we ought to know.

The Court: I think if you are basing it on him personally, his personal knowledge, I think——

Mr. McNichols: I will withdraw the objection.

The Court: ——I will permit him to answer. Not whether he has that contention, because that is for his attorneys to determine.

(Testimony of Miles H. Robinson.)

Mr. Kimball: I will limit it as to his knowledge. If I didn't so word it, I should have.

The Court: Yes. [1175]

Q. (By Mr. Kimball): Do you have any knowledge that any of the defendants or myself did any act to procure Mrs. Edwards to file a complaint on August 28th, 1950?

A. Well, it seems to me that the records show that Mr. Fullerton and Mrs. Edwards had a telephone conversation before the complaint was filed.

Q. What shows that?

A. Well, some of the transcripts of these hearings, and so on. It might be the April 22nd, 1951, hearing.

Q. You can't point that out to me right now, though?

A. I really can't. It just sticks in my mind that there was such a phone call.

Q. Doctor, I hand you what has been marked Plaintiff's Exhibit 15 in this action and ask you to examine it carefully. Will you read it aloud, please?

A. (Reading):

"Walla Walla Valley Medical Service Corporation, Drumheller Building"— [1176]

* * *

The Witness: Where do you want me to start?

Q. (By Mr. Kimball): Start with the date, please, September the 30th, at the top.

A. (Reading):

(Testimony of Miles H. Robinson.)

“September 30, 1950.

“Mr. Noel Edwards,
“225 Southeast 6th Street,
“College Place, Washington.

“Re: Report of Grievance Committee.

Dr. M. H. Robinson.

Date of Complaint: 8-29-50.

Date of Finding: 9-27-50.

“Dear Mr. Edwards:

“Your complaint against Dr. Robinson has been investigated by the grievance committee and following is their report:

“ ‘Dr. Robinson was questioned regarding the incident and the facts were substantiated with the exception that Dr. Robinson had called the patient’s home several times and was unable to contact the relatives since the child had been taken to another home.

“ ‘The grievance committee feels that it is unfortunate that the dissatisfaction had occurred and feels that some of the [1178] responsibility is probably due to the excitement at the time.

“ ‘The charge of \$1.50, which Dr. Robinson made for the telephone calls and the time taken away from his usual other work, does not amount to very much, whereas the majority of doctors in the community do not charge for telephone calls, there is nothing to prohibit them from doing so, and it can be shown to be justified since a doctor assumes responsibility when he gives advice either personal

(Testimony of Miles H. Robinson.)

or over the telephone. He cannot be expected to assume such a responsibility for nothing.

“ ‘In this case, however, since there was a misunderstanding regarding the prescription, the Grievance Committee feels that the best interests of all concerned should be to drop the matter, leaving the bill of \$1.50 unpaid, especially since the little patient seems none the worse for her experience.’

“Sincerely yours,”

and then there is the signature and typed in “C. E. Fullerton, committee secretary.” Left-hand corner, the secretary’s signature, CEF/amb; cc: Miles H. Robinson, [1179] M.D., Drumheller Building, Walla Walla, Washington.

Q. Thank you, Doctor.

Mr. Sembower: May I ask now that the letter-head be read also?

The Court: Yes, you may do that.

A. The letter is on the stationery here of Walla Walla Valley Medical Service Corporation, Drumheller Building, Walla Walla, Washington. Phones: 5220—5221.

Q. (By Mr. Kimball): Doctor, from the context of the letter and the copy of it which you received, did you get the impression that it was written on the behalf of the grievance committee for the local society?

A. Well, it is signed C. E. Fullerton, committee secretary, and I assumed that was secretary of the grievance committee.

(Testimony of Miles H. Robinson.)

Q. At the top it says "Re: Report of Grievance Committee," does it not? A. Yes.

Q. And in the last paragraph, it says in the second line, "The grievance committee feels that," and so on, does it not? A. Yes.

Q. Did that indicate to you that it was written on behalf of the grievance committee?

A. Well, I don't quite understand what you mean on behalf of. [1180]

Q. Well, what did those three references mean to you, if anything?

A. Well, I just—I am trying to think of the whole situation. Those particular three references certainly meant to me that the grievance committee was involved in this thing.

Q. Now refer to the first paragraph where it says, "Your complaint against Dr. Robinson has been investigated by the grievance committee and following is their report," and all that follows is in quotations and is indented, is it not? A. Yes.

Q. From the first paragraph of the report, is it indicated that you, Dr. Robinson, had been questioned regarding the incident by some member of the grievance committee?

A. Well, it says that.

Q. And that is a fact, is it not, Doctor?

A. Yes.

Q. Dr. Stevens being the person involved. Did it also bring up the fact in this first paragraph that you had made some explanation regarding the several calls that you had made? A. Yes.

(Testimony of Miles H. Robinson.)

Q. And had been unable to reach the mother or the guardian of the child? [1181]

A. Yes. Relatives, unable to contact the relatives.

Q. Now, that came on your conversation with Dr. Stevens, did it not? A. Pardon?

Q. That information probably came from the conversation you had with Dr. Stevens?

A. Well, I had no idea where they got—I mean, we talked about that, but I assumed that the grievance committee had made an independent investigation of this matter with the Edwards.

Q. Doctor, you have shown great resentment over this letter. Would you tell the Court what is your objection to the second paragraph of this letter, starting in “Dr. Robinson was questioned,” and so on? What is your quarrel with that paragraph?

A. Beginning with what words?

Q. The beginning of the report, starting “Dr. Robinson was questioned”——

Mr. McNichols: I object to the question and suggest that counsel qualify it first by asking if he has an objection.

The Court: Yes, I think that should be first, to find out which portion he does object to. Your question assumes he does, he has some objection. He may not have.

Q. (By Mr. Kimball): Doctor, do you have any objection to the contents of this first paragraph of this so-called [1182] report? A. Yes, I do.

Q. Will you state to the Court what your objection is?

(Testimony of Miles H. Robinson.)

A. Well, it says here, "The facts were substantiated."

Q. Is that your only objection?

A. To that paragraph?

Q. Yes.

A. Well, I don't know what they had done with the child. It says here, "Since the child had been taken to another home." My chief objection was simply that I assumed this was Dr. Stevens' conversation with me and it says here, "The facts were substantiated." I don't know what facts he is talking about, but I suppose it is the facts of the complaint, which I had never seen, and he says the facts were substantiated.

Q. All right, Doctor, go on to the next paragraph, please, starting out "The grievance committee feels that it is unfortunate * * *" Do you have any objections to the statements made in that paragraph? A. Well——

Q. Answer yes or no, please.

Mr. Sembower: Your Honor, I wonder if he means, does the question elicit the answer whether he had objections when he read it at first, or does he have objections today? If we could fix the time as to when he has the objection. [1183]

Mr. Kimball: I will fix it back as of that time, if it will be more helpful.

Q. As of the time you received the letter or soon thereafter, Dr. Robinson.

A. Well, it says: "The grievance committee feels

(Testimony of Miles H. Robinson.)

that some of the responsibility is probably due to the excitement at the time.”

I was confused about that, because, responsibility for what? I mean, responsibility for Mrs. Edwards getting excited, or the reason why she got excited, or whoever it was, the aunt.

Q. Well, tying that up with the context above, it says: “The grievance committee feels that it is unfortunate that the dissatisfaction had occurred and feels that some of the responsibility is probably due * * *” Wouldn’t you infer from that the responsibility refers to the dissatisfaction?

A. No, I felt that the responsibility referred to the facts of the complaint and the use of the word “responsibility” sounds as if something had gone wrong and nothing had gone wrong, everything had gone right, and yet he is talking about responsibility for what happened. Well, when things go right, you don’t worry about who is responsible for it.

Q. Referring to the next paragraph, it starts out: “The [1184] charge of \$1.50, which Dr. Robinson made for the telephone calls,” and so on, do you have any disagreement or dissatisfaction—did you have any disagreement or dissatisfaction with the context of that paragraph?

A. Well, it says the charge of \$1.50 does not amount to very much. Wait a minute, “the charge of \$1.50” and “the time taken away from his usual other work, does not amount to very much.” And I was a little sensitive—you are asking why I objected to it?

(Testimony of Miles H. Robinson.)

Q. Yes.

A. I was just a little sensitive to this grievance committee, who knew nothing whatever about the efforts I had made on this child, deciding that what I had done, the time that I took away from my other work, did not amount to very much. They had no idea how much time or how much worry I had over this child.

Q. Well, Doctor, just a moment, please. The sentence is: "The charge of \$1.50, which Dr. Robinson made for the telephone calls and the time taken away from his usual other work, does not amount to very much."

What does that mean to you?

A. Just what I told you.

Q. Do you think that means that it refers to your time or your work, and not the \$1.50?

A. The thing that does not amount to very much, according [1185] to this, is the \$1.50 and the time I took to earn the \$1.50.

Q. Is that the meaning you got from the letter?

A. Yes, it is.

Q. Do you consider this paragraph to indicate that the committee said your services and the time you spent were not worth very much?

A. I just missed the first word?

Q. Do you consider that this paragraph we are referring to, the statement by the committee that your time—

A. And the statement of the paragraph what?

Q. Do you consider that this paragraph—can

(Testimony of Miles H. Robinson.)

you hear me? A. Yes.

Q. This paragraph we are talking about in the letter, do you consider that that indicated that your services and the time you spent did not amount to very much? A. Why, yes, I did.

Q. Examining the last paragraph, Doctor, state your objections to that, if you have any.

A. Well, it says here, "There was a misunderstanding regarding the prescription." I object to that because there wasn't any misunderstanding about a prescription. At least—well, I will put it this way: Apparently, they did misunderstand the matter, but—yes, I take that back, that is perfectly—I don't object to that. [1186]

What I object to here is that "the grievance committee feels that the best interests of all concerned should be to drop the matter leaving the bill of \$1.50 unpaid."

Now, I take that to be a recommendation that my bill not be paid.

The second objection that I had was the last phrase. It says: "especially since the little patient seems none the worse for her experience."

Q. What is your objection to that, Doctor?

A. Well, it sounds like she had had a bad experience and I just—it is perhaps more the general atmosphere, the whole thing was patronizing, I felt, and to tack that on the end, it just gives a flavor to it, to my mind, that—Well, put it this way: That last phrase is the kind of thing that you would say if a doctor had done something really bad. Suppose

(Testimony of Miles H. Robinson.)

you said the doctor gave the wrong medicine, but let's not make a fuss about it because the patient is none the worse for this experience. In other words, I felt it was a gratuitous remark in there that just added to the general tone of the whole thing.

Q. Now, Doctor, have you stated all the objections you have to the letter?

A. Well, that is most of them. I think that probably is the main thing. Well, up here it says, "Date of [1187] complaint 8/29/50" and then "Date of finding." It sounds like they were a judicial court that had made a finding in this great matter, and I just kind of felt, I kind of objected to that.

Q. Anything else occur to you, Doctor?

A. Oh, I don't think so.

Q. Did anything else occur to you at the time or soon thereafter? A. Oh, it might have.

Q. Do you recall now what it might have been?

A. No, I don't.

Q. Dr. Robinson, do you consider that the committee, the grievance committee, had any right to legally fix the liability which any patient might owe you or not owe you by reason of your services?

A. No, I don't think it did.

The Court: May I see that?

(Exhibit handed to Court.)

Q. (By Mr. Kimball): Doctor, then the expression of the committee in this letter did not in your mind determine your right to have the dollar and a half or not, did it? A. Oh, yes, it did.

(Testimony of Miles H. Robinson.)

Q. Legally?

A. Well, I wasn't worried about it legally, I was worried about the practical effect [1188]

Q. Did you consider the committee had any right to fix the actual liability as to whether you could collect it or not from your patient?

A. Oh, I wasn't worried about legalisms or legal business.

Q. Doctor, will you tell the Court, please, whether or not you consider this letter a disciplinary act by the Walla Walla Medical Society or the grievance committee?

A. Well, when you tell a sick person or, let's say, a patient not to pay a doctor's bill and that telling comes from the secretary of the society on official stationery, I think that the doctor has been disciplined.

Q. And you consider this letter was a disciplinary act of you?

A. Yes, I did. I would like to explain that I didn't care about the dollar and a half, but it was the principle of the thing and, further, it was unprecedented.

Q. Doctor, I hand you what has been marked Plaintiff's Exhibit 16, I believe. It is a letter dated October the 9th, from yourself to Dr. Page. I will ask you, Doctor, is this the first letter that you wrote pertaining to this grievance committee action after you received the copy on September 30th?

A. Oh, I am quite sure it is.

Q. You are quite sure it is?

(Testimony of Miles H. Robinson.)

A. Yes. [1189]

Q. Now, on this date, October the 9th, 1950, that your letter to Dr. Page bears, you had had your visit to College Place, had you not, and seen Mr. and Mrs. Edwards? A. Yes.

Q. And you had talked to Mr. Tom Brooks by that time, had you not? A. Yes.

Q. And you had seen Mrs. Brooks at College Place, had you not? A. That's right.

Q. Now, Doctor, referring to Exhibit 15, may I inquire what you meant in the third paragraph when you said: "I deny absolutely the right of either laymen or doctors to officially censor my financial arrangements with my patients."

A. Yes, I think that that statement needs a little explanation. I was a little hot under the collar when I wrote this letter and what I had in mind was this, that it says the right of laymen to censor me. What was your question?

Q. Well, I inquired as to what you meant when you referred to the fact that you consider that absolutely laymen or a doctor had no right to question your financial arrangements with your patients. Do you find that? [1190] A. Yes.

Q. What do you mean by that?

A. Well, what I meant to convey was this: That if a patient doesn't want to pay a doctor's bill, the best solution is just don't pay it, and I mean what happens then is the doctor just doesn't get his money and, if it is a very serious matter, they can

(Testimony of Miles H. Robinson.)

take it to court if they want to and, otherwise, it works out perfectly well. The patient doesn't pay and is dissatisfied, the doctor loses a patient, and that is a very good way to settle it.

Q. Doctor, you said in this paragraph—I am talking about the third paragraph: “Rather more serious, were it not so ridiculous, is the right of Mr. Fullerton to send letters to my patient stating categorically that certain telephone calls did not take much time from my work and did not amount to very much.”

Do you see that? A. Yes.

Q. Is that referring to the same paragraph that we were discussing in the letter itself?

A. Yes.

Q. Doctor, by your statements in this letter, did you mean that you did not then consider any doctor or medical society or a committee of a medical society had any right [1191] to inquire or discuss or concern itself about your financial arrangements with your patients relative to fees?

A. Well, I looked in our constitution and bylaws and it doesn't say anything about doctors censuring—I mean anything about the society or any doctor in it censuring a member of the society in regard to his fees.

Q. Well, I am not inquiring about that, I am inquiring now as to whether you consider that that is a proper subject matter for inquiry on behalf of a professional society?

A. Well, I think they can inquire all they want, but officially censuring a man is something else.

(Testimony of Miles H. Robinson.)

Q. Officially censuring as in this letter of September 30th?

A. Well, I think an official letter to a patient telling them not to pay your bill is—I mean I think that letter is an official censuring letter.

Q. You think that the suggestion as to compromise to settle a small matter that the bill not be paid is an official censure?

A. In principle, yes.

Q. You have stated previously that you assume Mr. Fullerton had written a letter as secretary, did you not? I am referring to the letter of September 30th? A. Yes.

Q. Was not one of the purposes of your letter of October the [1192] 9th to secure the sacking or firing of Mr. Fullerton for his actions in this connection?

A. Well, now, somewhere or other I think that I made the suggestion that this kind of behavior by a layman who knew nothing about a doctor or his charges or anything else was insufferable and it might be a good idea to get rid of him.

Q. Although the letter stated he was signing as secretary of the committee?

A. Well, he signed it, that is all I know.

Q. Well, you knew that he signed it as secretary? Isn't that shown in the letter, Doctor, in the copy you received?

A. Well, Mr. Fullerton was chief factotum, you know. He was everything, he was secretary of the society, secretary of the bureau, secretary of the

(Testimony of Miles H. Robinson.)

secret grievance committee, so I really can't tell you. I mean as a practical matter, I can't say just what capacity he was acting in.

Q. Well, let me read to you this fourth paragraph:

"I am not trying to jump to conclusions, but it seems to me that this letter is typical of the authority which Mr. Fullerton exerts. I believe that it is imperative that all other members of the society be acquainted with the facts in this [1193] case and the principles involved and that his resignation from any official position with our society be arranged at the earliest opportunity."

Was that an invitation on your part to have him fired or for him to be relieved?

A. Well, I don't know just what you mean by an invitation.

Q. Well, I refer to your language in this letter where you stated that his resignation from any position should be arranged at the earliest opportunity?

A. Well, I felt then, as the president of the State Medical Association felt later, that laymen should not be doing this kind of work on grievance committees. They don't know enough to do it.

Q. In a representative capacity, Doctor?

A. In any capacity.

Q. Well, might it be cured by removing that as one of his duties, without firing him?

A. Well, I don't know. Mr. Fullerton was just kingpin down there, and I felt that some of the

(Testimony of Miles H. Robinson.)

other things that he had done and the whole pattern as I was seeing it evolve over the past year or so was a bad thing, and I think this is a somewhat intemperate paragraph written to the president of the society and it is just a little bit stronger, I think, than probably would have been better taste. [1194]

Q. All right, Doctor, I don't want to drag out that point.

The last paragraph on page one, you say:

“So far as the recommendation of this letter to the patient that my bill not be paid, it actually means absolutely nothing to me. The opportunity will doubtless present itself very soon when I can discuss with the parents of the little patient the uncertain guidance they are getting in this letter.”

Do you follow me, Doctor? A. Pardon?

Q. Do you see that portion? A. Oh, yes.

Q. This is written on October the 9th, Doctor?

A. Yes.

Q. And at that time you had seen the parents?

A. Oh, yes.

Q. What did you mean when you said the opportunity would soon present itself when you would see and discuss this matter with them?

A. Well, I thought I might talk to them some more about it some time, and I just wanted to let Sam Page know that I felt I had a right to discuss this complaint with the parents.

Q. On the top of page two of this same letter,

(Testimony of Miles H. Robinson.)

did you say, [1195] in part: "And for my part, I will do what I can to keep the thing quiet."

Do you find that?

A. I think you are asking me the meaning of that previous paragraph, and when I said that the recommendation of the letter "means nothing to me," I simply meant that I didn't feel any secret grievance committee could tell a doctor what to do.

Q. Very well. Now, will you go on to the next question, please? Did you hear it? The top of page two.

I will reword it. The first paragraph on page two says:

"I hope it will not become necessary for the society to publicly disclaim the occult workings of this grievance committee which it has elected; and for my part, I will do what I can to keep the thing quiet. But as you can see, the provocation to me is extreme." A. Yes.

Q. What did you refer to when you said you had intended to keep the thing quiet?

A. Well, I was just letting him know that I thought he should do something about this committee and, if he didn't, I would appeal to the members and there would naturally be more of a stir about it. [1196]

Q. By "quiet," you referred then to the action of the grievance committee, not to this particular letter?

A. No, I referred to the whole business of hav-

(Testimony of Miles H. Robinson.)

ing a secret grievance committee and of it acting in this fashion.

Q. And that is what you referred to when you said you would do what you could to keep it quiet?

A. Why, yes, I thought maybe Dr. Page himself could settle it and, if he couldn't, maybe the trustees could settle it, but I was just letting him know that I felt this was an important principle and it should be taken to the society itself, if necessary.

Q. Whom did you send copies of this letter that I have just referred to?

A. Well, to the other trustees, it says here.

Q. And that was on October the 9th. On the 12th, did you write another letter on this same subject?

A. Well, I think that is possible. I got no answer from this one.

Q. I hand you what has been marked Exhibit 20 and I believe is admitted.

A. Yes, I wrote this letter.

Q. Who is that addressed to?

A. Well, it is addressed to "Dear Doctor."

Q. What is the date? [1197]

A. October 12th.

Q. And to whom was it sent?

A. To, I think, all the members of the society.

Q. That would be 42 members as of that date?

A. Oh, I don't know, around that.

Q. Was it also sent to all of the doctors who were at the Walla Walla Veterans' Hospital?

(Testimony of Miles H. Robinson.)

A. I don't know about that, whether it was or not.

Q. They would be included in the 42 members, would they not?

A. I don't think so. I think it adds up to 75 or 80.

Q. I think you are probably right. Probably, if you sent it to just 42, it would be the Walla Walla doctors, would it not?

A. I don't think I would have sent it to them, they have no vote or anything.

Q. And was this letter sent out at or about the date it bears, October the 12th?

A. Well, I couldn't be sure about that. It might have gone out a few days later.

Q. You sent it out in mimeographed form, I believe?

A. Pardon?

Q. You sent it out in mimeographed form?

A. Yes.

Q. And you sent it out before you had had any reply from [1198] your letter of three days earlier to Dr. Page and the trustees?

A. Well, I either had no reply from him or else he just passed the whole matter off. In any case, it was clear that he was going to do nothing.

Q. Well, from what was it clear?

A. My recollection is that I saw him in the course of making rounds or something of that kind, and his attitude was that he wasn't going to do anything about it.

(Testimony of Miles H. Robinson.)

Q. Then you are testifying that you did communicate with him or he with you in the interim?

A. No, all I know is that I just didn't get any response.

Q. In the three-day period?

A. Yes. [1199]

* * *

Q. Dr. Robinson, at the close of the session yesterday I had handed you Plaintiff's Exhibit 20, being a letter from you to "Dear Doctor," dated October 12, 1950. I hand you that again. This was a letter written by you? A. Yes.

Q. Mailed out by you? A. Yes.

Q. On or about the date it bears?

A. Well, it was a few days after the date, I believe, that [1202] it was actually mailed.

The Court: What number is that?

Mr. Kimball: Number 20, your Honor.

Q. And mailed to whom?

Q. That was mailed to the active members of the Walla Walla society.

Q. That would be the same group that you referred to before as being the 42 active members of the local society?

A. Well, it may have been 35. It is approximately that number.

Q. Was this letter sent out by you before you had had any answer to your letter three days earlier to Dr. Page and the board of trustees?

A. I never got any answer to that letter.

The Court: Your answer is yes, then. Go ahead.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Would you examine paragraph two of the letter I just handed you, Exhibit 20, where you said in part:

“What would be your reaction if this letter stated that your medical service did not take much of your time and advised the patient not to pay your bill?”

I assume that you were referring to the letter of September 30th from the grievance committee, is that correct? [1203] A. Yes.

Q. Again I ask you, Doctor, to tell me what part of the letter of September 30th you referred to at that point when you said what you said?

A The last paragraph. [1204]

* * *

Q. (By Mr. Kimball): There is another reference in this letter of October the 20th that I would like to ask you about, Doctor.

A. You mean October the 12th?

Q. Yes. Paragraph one, the first paragraph of your letter of October the 12th, you said in part:

“Would you like to have an official committee of your medical society write a letter to one of your patients and discuss the quality of your medical service?”

Did you have anything in mind referring to quality that you haven't already testified about concerning this letter of September 30th?

The Court: I think that is a different question. You may ask that.

(Testimony of Miles H. Robinson.)

A. Why, I have nothing to add to what I have already said about the letter yesterday.

The Court: I am not sure what you said about the quality of your service, Doctor.

A. Oh. [1205]

The Court: I know what you said as to your construction, that it indicated that your services didn't amount to much.

A. Let's see—I tried to make clear yesterday, probably not very well, that I felt the whole tone of the letter and the inference in the last phrase where it says, "especially since the little patient seems none the worse for her experience"—

The Court: Don't you think that might have meant the experience of swallowing the pills? Doesn't that mean that to you? I have had difficulty getting your construction there.

If you think that was a reflection on the quality of your service, if that is your answer, I don't want to keep you from answering what you felt about it.

A. What was your question, Mr. Kimball?

The Court: Well, go ahead.

Q. (By Mr. Kimball): Dr. Robinson, my question referred to what you referred to in the letter of September 30th when you said in your letter of October the 12th that it discussed the quality of your medical service, and I want to know what you referred to in the grievance committee letter that discussed the quality of your services?

A. Well, I just had the general feeling that this

(Testimony of Miles H. Robinson.)

letter to [1206] the Edwards was discussing the quality of my service to the Edwards.

Q. Very well. Doctor, in the same letter of October the 12th, Exhibit 20, you said, in part:

“Would you feel better if the executive secretary of the committee informed you of the affair by sending you a carbon copy of the letter?”

Do you consider that was a fair statement, Doctor? A. I don't know what you mean.

Q. Well, to get down to what I am referring to, wasn't it a fact that Dr. Stevens of the grievance committee informed you of the affair and not the executive secretary?

A. Oh. Well, what I meant by that statement was after such a letter had been sent out without warning, I raised the question whether it made it any easier on me or on the doctor to just be handed a carbon copy of what I took to be really a rebuke.

Q. Doctor, paragraph four——

The Court: What was that last statement you read there that he first got notice of it?

Mr. Kimball: The statement in his letter to which I referred, the letter of October the 12th, was: “Would you feel better if the executive secretary of the committee [1207] informed you of the affair by sending you a carbon copy of the letter?”

The Court: Oh.

Mr. Kimball: End of quote.

The Court: All right, go ahead.

Q. (By Mr. Kimball): Doctor, I now ask you to look at paragraph four of your letter of October

(Testimony of Miles H. Robinson.)

12th. What was the basis of your claim there that the lay secretary had the authority from the committee to investigate the complaint and check the veracity of the complainer, and so on? What was the basis of your statement?

A I don't understand your question.

The Court: Read the part of the letter that you had in mind.

Mr. Kimball: Yes, I will. I am reading the fourth paragraph of your letter of October 12th sent to all the doctors in Walla Walla:

“If the patient had a complaint about your work, would you like to have all such complaints cleared through a layman who had authority from the committee to investigate the complaint, check the veracity of the complainer, hold up or continue the matter, and so on?”

Q. And my question was, what was your authority for saying that the lay secretary had such [1208] authority?

A. Well, it says in the letter that he is secretary of this committee and he is the one that is writing this letter criticizing what I did.

The Court: What says in there that he investigated it? Is there anything from that that you concluded that he had the power to investigate?

A. No, your Honor, I merely assumed that he had investigated it since——

The Court: Because he signed the letter and quoted the findings of the committee, is that your conclusion?

(Testimony of Miles H. Robinson.)

A. Well, I just knew that he handled these things and that he was the chief man in everything.

The Court: It wasn't based on this particular letter, then, but on your general knowledge otherwise? A. Yes, your Honor.

The Court: Go ahead.

Q. (By Mr. Kimball): But didn't you know, Doctor, that Dr. Stevens had also investigated it and talked to you about it?

A. Well, yes, I did.

Q. Why did you not so state in your letter, then, your letter of October the 12th?

A. Well, because I felt it was a joint activity of Dr. Stevens and Mr. Fullerton.

Q. In paragraph six of your letter of October the 12th, you [1209] state that you are enclosing a copy of such letter. Was this the letter of September the 30th that we have been discussing, from the committee? Paragraph six on the first page, Dr. Robinson:

"Enclosed you will find a copy of just such a letter as I have described above." A. Yes.

Q. Was the other letter mentioned in this letter, your letter to Dr. Page of three days earlier?

A. I believe so.

Q. Exhibit 16 in this case and introduced?

A. Well, it is my letter to Dr. Page of October 9th, 1950.

Q. Yes. Doctor, how does your sending of these letters out to 42 members of the society and enclosing the correspondence which you indicate you en-

(Testimony of Miles H. Robinson.)

closed reconcile with your statement in your letter to Dr. Page of three days earlier that you will do what you can to keep the thing quiet?

A. Well, I had no response from Dr. Page so I assumed that he was not going to respond and felt that I would have to take it to the society.

Q. And if you sent the letter to Dr. Page on the day it was written, on the 9th, he probably would have received it the 10th, would that be correct?

A. Yes. [1210]

Q. And this was two days later, the 12th?

A. And, as I said before, my recollection is that I called him up and talked to him about my protest on October the 9th and that he made no response and indicated that he was not going to do anything about it.

Q. Doctor, will you turn to page two of Exhibit 20 and note where you said:

“What the committee is trying to do in my case is enforce a low price in restraint of trade. Despite its fine words about telephone charges, its decision is that the medical service over the telephone should have been free from charge This causes my work as a whole to the patient to be rendered at a lower price,” and so on.

Do you see that? A. Yes.

Q. Did you have anything in mind in writing that other than you have testified about in criticism of the letter?

A. Oh, I don't understand what you mean.

Q. Well, let me ask you, then, what part of the

(Testimony of Miles H. Robinson.)

letter were you referring to in making this statement when you say what the committee is trying to do?

The Court: What is that statement again?

Mr. Kimball: The statement that I asked the doctor [1211] about is as follows. It is in the second paragraph, it says:

“What the committee is trying to do in my case is enforce a low price in restraint of trade. Despite its fine words about telephone charges, its decision is that the medical service over the telephone should have been free from charge. This causes my work as a whole to the patient to be rendered at a lower price,” and so on.

Q. What part of the letter did you have in mind when you made that charge?

A. Well, the whole purport of the letter is telling them not to pay the bill.

Q. Doctor, will you go to the last paragraph of page two of your letter of October the 12th?

A. Yes.

Q. I will read that to you:

“Aside from the general principles that stand against the actions of this secret grievance committee, the legal aspects must be considered. From a legal standpoint, the committee has publicly and effectively attacked my reputation.”

I ask you about that, Doctor, what did you have in mind when you referred to the legal aspects of the actions of the committee? [1212]

A. Well, they had attacked my reputation.

(Testimony of Miles H. Robinson.)

Q. You considered that the letter to the patient, Mrs. Edwards, was a public attack on your reputation? A. Well, I would say so, in principle.

Q. Doctor, on page three of this same letter, in the second paragraph, please refer to it, you said, in part:

“The immediate result of this attack is that I have lost the trade of seven people in three related families, each of whom I have treated and two of whom have chronic diseases of the utmost severity.”

Dr. Robinson, isn't it a fact that on the day following this letter, you, yourself, wrote to Mr. and Mrs. Brooks stating that you were giving up their cases?

A. Oh. Well, I wrote on the same day to Mr. and Mrs. Brooks, but the point is I knew I had lost them over the week end from the attitude of Mr. Brooks.

Q. On October the 9th, three days before this, hadn't you told Mr. Edwards on the telephone that you were giving up their case?

A. On what date?

Q. October the 9th, three days before this October 12th letter?

A. I started to tell him that I would have to give up the case and I certainly conveyed that idea to him. [1213]

Q. Had you had any communication up until this date from the Emersons or the Lepianes that they had given you up as their doctor?

A. No.

(Testimony of Miles H. Robinson.)

Q. Please refer, Doctor, to the fourth paragraph on page 3 of Exhibit 20, starting out:

“Since the action of this committee and of the executive secretary who signed the letter severely violates our traditional medical freedom and has directly injured my livelihood and reputation, I feel that redress is rightfully mine.”

What did you have in mind in making that statement?

A. Well, I felt that the membership should put a stop to this secret committee and to its activities.

Q. And in paragraph four of the letter, you again state, in substance, your complaint, and you end up with this remark——

A. Paragraph four, where?

Q. Page three, I’m sorry, of Exhibit 20, the last sentence is:

“Lastly, we should abolish this secret grievance committee and elect a committee on ethics specifically instructed to deal only with medical practice and never with [1214] fee complaints.”

Is that the statement you made?

A. Yes, I wrote that.

Q. And did you feel that to be a proper statement of your attitude toward society regulations dealing with doctors?

A. Well, they seemed determined to add another committee to our organization, which, fundamentally, we didn’t need any such committee at all if they would just implement what we already have,

(Testimony of Miles H. Robinson.)

so I thought if they have got to have another committee, let's elect a decent committee.

Q. Now, Doctor, didn't the writing of this letter of October the 12th launch you on your campaign against the grievance committee and your complaints against the committee?

A. Well, I suppose my first complaint against the grievance committee occurred when Dr. Stevens stopped me on the street. Up until then, I didn't know whether the committee was dead or alive.

Q. I didn't express myself clearly. I meant not between you and Dr. Stevens and you and Fullerton, this went to all the doctors? A. Yes.

Q. And by launch, I meant before the grievance committee, before the whole society?

A. Well, I think it did. [1215]

Q. It did. Doctor, I hand you what has been marked as Plaintiff's Exhibit No. 27—it is not admitted yet—and ask you if you know what that is?

* * *

Q. (By Mr. Kimball): Doctor, can you tell me what that is? [1216]

A. That is a letter that I wrote to the AMA.

Q. Dated October 24, 1950? A. Yes.

Q. You say the AMA; to whom was it specifically addressed?

A. Well, it was sent to the legal department.

The Court: If there is matter on there that is not part of the letter and is not material, it should be masked.

(Testimony of Miles H. Robinson.)

Mr. Kimball: Surely. I am simply referring to the letter.

The Court: Yes, all right.

Q. (By Mr. Kimball): This was written approximately, then, twelve days after the last letter we were talking about that was sent to all the members, is that correct? A. Yes.

Q. And you ask in this letter, do you not, for a legal opinion relative to grievance committees and their formation? A. Yes.

Q. And you state in this letter—

Mr. Kimball: Oh, excuse me, I ask for this to be admitted.

The Court: Well, it will be admitted, then. I assume there is no objection.

Mr. Sembower: No, we have no objection.

The Court: Plaintiff's Exhibit 27 will be [1217] admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 27.)

Q. (By Mr. Kimball): In paragraph two, Doctor, you said:

“Enclosed you will find letters pertaining to the same, including a general letter dated October the 12th, 1950, which I sent to the 42 members of our local society.”

You see that? A. Yes.

Q. Doctor, that is where I got the number 42 and I assume you will conform your recollection to that number now?

(Testimony of Miles H. Robinson.)

A. Yes, that must be correct.

Q. And the enclosures you mentioned were the letters you had written previously to the society?

A. I do not know exactly. Oh, yes, it says, but it says letters, plural. I imagine that is the letter to Page, to Dr. Page, and the letter to the members of October 12th.

Q. Thank you, Doctor. I hand you what has been marked as Plaintiff's identification No. 33——

The Court: That is admitted in evidence.

Mr. Kimball: Oh, yes, thank you.

Q. Doctor, this is what?

A. It is a letter I sent to the members of the society. [1218]

Q. Dated November the 1st, 1950?

A. Yes.

Q. A two-page letter signed by you and sent to the members of the society? A. Yes.

Q. Doctor, I notice in the last part of page one and carrying over to page two that you have enumerated various provisions of the constitution and bylaws of the local society? A. Yes.

Q. Do you find that? Had you at that time, therefore, referred to them and familiarized yourself with them to some extent? A. Yes.

Q. And in the last paragraph of your letter on page two, you said, did you not:

“For the good of the profession as a whole and for the protection of each of us, guaranteed by the constitution of our society, I ask for your opposition to this grievance committee.” A. Yes.

(Testimony of Miles H. Robinson.)

Q. Now, Doctor, I will ask you if just two days after this letter of November the 1st, which was mailed, I believe you said, to all of the 42 members of the local society, did you again write a letter, mimeographed, to all the [1219] doctors in the society dated November the 3rd and identified as Exhibit 35 herein? I will hand it to you.

A. Yes.

Q. And this was written by you? A. Yes.

Q. Mailed to whom? A. The same doctors.

Q. On or about the date it bears, November the 3rd?

A. Yes, within a few days, I would say.

Q. In paragraph two of this letter, you have stated that you thought you were selected as a "special target" for the grievance committee. Do you see that? A. Yes.

Q. Then you go on to say in the same paragraph:

"In the last eight months, its weighty deliberations have produced action against only two other members of the society."

Do you see that?

A. Well, the number 8 has been corrected to 4 on this copy, and I vaguely remember—I seem to remember that I did correct that to number 4.

Q. I'm sorry, Doctor, my copy doesn't show that correction, but if yours does——

The Court: Was that a correction made before it was mailed out, you mean? [1220]

A. Yes, it was, I think. I think so.

(Testimony of Miles H. Robinson.)

The Court: May I see it, please?

A. It was an accidental error in any case.

Q. (By Mr. Kimball): That may very well be. I have a copy you furnished us and you may not have corrected it on your copy.

A. Well, that was probably mimeographed a second time in connection with furnishing it to different lawyers.

Q. What did you mean by your statement, Doctor, that you had been selected as a special target for the grievance committee?

A. Well, I had never heard of any such action by the grievance committee before.

Q. Did you know what action the grievance committee had taken on the other two cases you referred to?

The Court: Four, wasn't it?

Mr. Kimball: I think he said four months, your Honor.

The Court: Let's see——

A. The number of months I had wrong.

The Court: Oh, in the last four months. I misconstrued that. Go ahead. Four months instead of four cases.

A. Well, my recollection is that some time along in here I talked to either Mr. Fullerton or it might have been Dr. Moore or somebody—I rather think it was Dr. Moore—and he said—well, I know that I talked to him once [1221] about this—and he said, “Well, you shouldn't be too upset.” He said they wrote—he didn't say they wrote, he said, “they

(Testimony of Miles H. Robinson.)

changed one of my bills, also." I don't recall him saying anything about a letter being written.

Q. And he was one of the two cases you had in mind?

A. Well, I have learned that since, but I talked to somebody, either Fullerton or Moore or somebody, and learned that there had been two other cases

Q. Did you know the other doctor that was involved?

A. No, I never learned that until the lawsuit began, and then I learned, I think, it was Dr. Carlson and I couldn't tell you for certain just when I learned Dr. Moore had had a case. But I know the record shows that my case was the third case that the grievance committee had.

Q. Did either of these two doctors, if you knew either of them then, state to you that they felt they had been selected for special treatment or a special target by the grievance committee? A. No.

Q. Did either of them state to you that they had considered the action of the grievance committee disciplinary in nature?

A. Well, they didn't use that word, no.

Q. Well, what words did they use? Did they give that [1222] meaning?

A. They just said that their fees had been corrected, you might say.

Q. In paragraph three of Exhibit 35, please refer to it, Doctor. You refer to the fact that the Edwards family could spread the information and

(Testimony of Miles H. Robinson.)

harm you? A. Yes.

Q. Did you have any reason to believe that they were doing anything to spread the information or publicize it?

A. Oh, I based that on my experience with the way news travels in a small community, tightly knit community.

Q. Well, Doctor, do you think the news might have traveled partly by these letters you were sending out?

A. Well, certainly traveled to the members of the society. I was interested in doing that. When I say that, I do not mean the news about the Edwards, but the news that this letter had been written about one of my patients.

Q. In seeking your request for a special meeting at or about this time, as indicated in this letter, had you taken this up with the trustees or any member of the board of trustees for a special meeting?

A. I either asked Dr. Page or else I read it in the constitution of the society. I don't know whether it is in the constitution just how many members you have to have. [1223]

The Court: I don't think he understood your question.

Mr. Kimball: I'm afraid I didn't make my question clear.

Q. In this letter of November the 3rd, you are specifically requesting the members to send in requests for a special meeting, aren't you?

A. Yes.

(Testimony of Miles H. Robinson.)

Q. I am asking, had you previously asked the board of trustees to hold a special meeting for you on this complaint you had against the grievance committee?

A. My recollection is that I did and that Dr. Page told me that you have to have nine members to hold a meeting, but I can't say for sure.

Q. Doctor, I hand you what has been marked either identification or Exhibit 37 by plaintiff.

The Court: It is admitted.

Mr. Sembower: What is the date?

Mr. Kimball: Dated November 7, 1950, and addressed to the board of trustees of the Walla Walla Medical Society.

Mr. Rosling: Would it help the Court if we gave the Court carbon copies of these various letters?

The Court: I think it would. It would enable me to follow the testimony more readily.

Mr. Kimball: I think that is a good suggestion.

The Court: This is number 33? [1224]

Mr. Kimball: 37.

The Clerk: 37.

The Court: 37, yes.

Mr. Kimball: Admitted.

The Court: All right, thank you.

Q. (By Mr. Kimball): Dr. Robinson, do you find this to be a four-page letter that was written by you to the board of trustees of the Walla Walla Medical Society? A. Yes.

Q. Was it sent on or about the date it bears?

A. It was sent on that date.

(Testimony of Miles H. Robinson.)

Q. Doctor, the second paragraph on page 1 of this letter, I am talking about the second full paragraph where it states:

“In this complaint, I will show you that the responsible members of this secret grievance committee have in their official capacity disciplined me by means of the aforesaid letter and that this action of theirs was uncalled for, unjust, unethical, malicious, and in flagrant violation of our constitution and by-laws.”

Now, you have listed and enumerated thereafter the various charges you make against the committee and their letter, is that correct?

A. Well, against the committee. [1225]

Q. Doctor, is there anything in these listed charges that you didn't testify to yesterday when you were telling me your objections to the letter? You may look through it to refresh your recollection.

A. Well, I think it is a more complete account.

Q. Well, very briefly, I want to refer to a few items in there, Dr. Robinson.

Under number 1, you state in this letter:

“That ignored the fact that, in addition to uncompleted calls, I talked to the mother of the patient twice at great length.”

First, you advised her what to do, and so on, was that true?

A. Well, I think it was true, because I wrote this within a month or two of when it happened, and yesterday it is five years ago and I certainly

(Testimony of Miles H. Robinson.)

must have talked to her twice. Of course, I thought it was the mother, the woman that I talked to. It was obviously the aunt, or at least that is what they say.

Q. At the time you wrote the letter, your memory was more fresh on the facts and you would presume that was correct?

A. Yes. Of course, I just assumed it was the mother at that time.

Q. In the second numbered charge in your letter of, Plaintiff's Exhibit 37, you state that the Edwards' letter [1226] established the principle that "because a part of the service may have been imperfectly accomplished, none of it should be paid for."

Where did you get that complaint, from the letter of September the 30th? And I will hand it back to you for your examination.

A. You don't have to. The letter states that there was confusion about a prescription, implying that there was some failure to perfectly accomplish the sending of a prescription.

Q. I hand you Exhibit 15, Dr. Robinson, and ask you to read to the Court the part of that letter that substantiates your charge.

A. (Reading): "In this case, however, since there is a misunderstanding regarding the prescription * * *"

Q. And that, in your opinion, substantiates your charge in your letter of November the 7th that it established the principle that because a part of the

(Testimony of Miles H. Robinson.)

service may have been imperfectly accomplished, none of it should be paid for?

A. Well, it takes the whole letter to establish that, but it relates to the matter of the prescription, which is their complaint of the imperfection.

Q. Look at number three of your letter of November the 7th, where you said: [1227]

“The letter to the Edwards emphasized the policy that if a doctor did not include some business for a druggist in his service, the patient does not have to pay the doctor.”

What part of the letter of September 30th would you say justified that charge?

A. Oh, the whole emphasis of the letter on a prescription, when the prescription had nothing to do with the treatment.

Q. Can you point to a specific part of the letter that bears that inference?

A. Well, the word “prescription” in the last paragraph.

Q. Read that, please.

A. It says:

“In this case, however, since there was a misunderstanding regarding a prescription * * *”

In other words, I felt that the letter was emphasizing the subject of a prescription, which it had no right to do, because a prescription was not involved in my treatment, and I am a little sensitive on the subject of wholesale use of prescriptions in the treatment of disease. I feel that it is grossly overdone.

(Testimony of Miles H. Robinson.)

Q. You didn't feel, then, that the letter referred to a misunderstanding about a prescription, and not a prescription itself? [1228]

A. Well, the whole letter is written because of a misunderstanding about a prescription when the prescription is not part of my treatment of that patient.

Q. Very well, Doctor. Let's go on to the fifth charge of your complaint, where you say that the letter was humiliating to you and that Mr. Fullerton had been selected to administer a public rebuke.

What part of the letter are you referring to in that charge?

A. Well, it was humiliating to me to have an official letter written by the secretary of all the medical organizations in Walla Walla criticizing my little bill of a dollar and a half, and——

The Court: What part of the letter constitutes the reprimand? Is that the whole letter?

A. Well, your Honor, I feel that the recommendation that my bill not be paid was the reprimand, and also the statement that the time taken away from my work does not amount to very much. I think I was a little over-sensitive there, but I worried about the patient quite a bit.

Q. (By Mr. Kimball): Doctor, did you have any more to say on that subject?

A. Not really.

Q. Please turn to page three and look at the next to the [1229] last paragraph, where you said:

“Justice also requires that the members of the

(Testimony of Miles H. Robinson.)

committee responsible for the injurious letter be adequately disciplined for their unjust and malicious attack upon me and for their violation of the constitution and bylaws which protect us all.”

Whom did you think should be punished?

A. Well, I didn't know. The members of the committee were secret.

Q. Did you mean the members of the committee, whoever they might be?

A. Well, that is what it says and that is what I meant.

Q. Did you mean Dr. Stevens?

A. Well, yes. I feel that I should be allowed to explain that I was developing what they call a “slow burn,” you might say, on the whole subject of this secret committee, and I knew the society was apathetic in most things and I just thought I would put the case in a strong way.

Q. Thank you, Doctor. I hand you what has been marked Exhibit 38. I am not sure that it has been admitted.

Mr. Kimball: This is Exhibit 38, Plaintiff's Exhibit 38, and I believe it has been admitted. Am I correct?

The Clerk: Yes.

Q. (By Mr. Kimball): This, Doctor, is, I believe, a letter [1230] dated November the 8th, 1950, addressed to Dr. Miles H. Robinson, Walla Walla, and signed by E. L. Henderson on stationery of the American Medical Association.

Who is Mr. Henderson, if you know?

(Testimony of Miles H. Robinson.)

A. Well, he is the president of the AMA.

Q. It is a very brief letter, would you read it, please?

A. (Reading):

“Dear Dr. Robinson:

“I wish to acknowledge your letter of October 30th and also copy of the letter you have sent out to your colleagues.

“Of course, I would not be able to advise you whether or not this violates the constitution of your local medical society, as these constitutions and by-laws differ in various parts of the country.

“I hope that this matter can be settled to the satisfaction of all concerned.

“Sincerely yours,

“E. L. HENDERSON.”

Q. The letter referred to as being acknowledged in this letter, would that be Plaintiff's Exhibit 31 in this action, dated October the 30th, 1950?

A. Yes.

Q. What did you say in that letter? [1231]

A. (Reading):

“Dear Dr. Henderson:

“I am taking the liberty of writing you again because I do believe the action of our grievance committee has grossly violated the constitution of our local medical society. This did not occur to me until after I had written you.

“In the hope that this will meet with your in-

(Testimony of Miles H. Robinson.)

terest and concern, I enclose a letter I am sending to my colleagues here amplifying this viewpoint.

“Sincerely yours, [1232]

“M. H. ROBINSON, M.D.”

* * *

Mr. Kimball: May I approach the bench? This is a copy of the letter.

The Court: Yes, all right. This is 42.

The Clerk: 42.

Q. (By Mr. Kimball): Doctor, have you had a chance to refresh your recollection as to the contents of this letter? A. Yes.

Q. State, in a general way, what information was given to you by the letter itself.

A. Well, it is a long letter and—

Q. Strike the question and I will ask you to turn to page two and the first complete paragraph thereon, which says:

“You do raise one question as to the right of a grievance committee to pass on the question of adequacy of fees charged by a physician. In my judgment, many controversies do arise between patients and their attending physicians over the question of fees, and it seems to me that a question of this sort should be one that would [1234] come within the jurisdiction of a grievance committee.”

Did you agree with that statement when you received it? A. I had—no. [1235]

* * *

(Testimony of Miles H. Robinson.)

A. I did want to say just one word on the original question. I answered no to that question and it is difficult to just say no, and, much as I don't want to dwell on the matter in any way, I just want to point out that I don't feel that we need a grievance committee.

Q. (By Mr. Kimball): Now, Doctor, I am asking you to refer to Exhibit 41. A. Yes.

Q. State briefly what this is.

A. It is a letter from myself to the president of the state medical association, with carbon copies to the other officers.

Q. Dated November 13, 1950? [1236]

A. Yes.

Q. And addressed to Dr. Kenneth L. Partlow?

A. Yes.

Q. He was the president of the state association at that time, was he? A. Yes.

Q. In the first paragraph, you start out by saying:

“Dr. E. L. Henderson, president of the AMA, has written me on November the 1st and advised that I should take up with you the problem of our local secret grievance committee.”

Do you see that, Doctor? A. Yes.

Q. The letter referred to there from Dr. Henderson, dated November 1st, is that the letter that has been marked herein as Plaintiff's Exhibit 32, which I hand you? A. Yes.

Q. Doctor, did you on November the 22nd also write to the trustees of the Washington State Medi-

(Testimony of Miles H. Robinson.)

cal Association, and I hand you Exhibit 48 which is the letter to which I am referring, Plaintiff's Exhibit 48?

The Clerk: What is the number of that one?

Mr. Kimball: 48.

A. Yes.

Q. Referring briefly to Exhibit 48, this is a letter that [1237] was written by you to the trustees of the Washington State Medical Association, is it not? A. Yes.

Q. Copies are indicated to have been sent to all or other members of the board of trustees?

A. Yes.

Q. Look at the next to last paragraph of this letter on page two, please. A. Yes.

Q. Where you said:

“I know nothing about the powers of our state society in this sort of thing, but I do hope that some authority exists which can act to prevent a few doctors in our county society here from making a mockery out of our constitution and subjecting the rest of us to the public ridicule and contempt which will result if they drive me into a lawsuit against them.”

What did you have in mind, Doctor, when you wrote that?

A. Well, I had in mind that the courts are the ultimate protection.

Q. Did you have in mind litigation at that time?

A. No, I don't think so. I just had it in mind to point out to the state association—now, this was the

(Testimony of Miles H. Robinson.)

day after they held that four and a half hour hearing in [1238] Dr. Ralston's office which I attended and you are asking me what I had in mind. That was a terrible experience. I wasn't given a chance to tell my side of the story and the hearing was very unfair and, consequently, I thought, well, this is serious and I may have to seek the protection of an impartial body.

Q. Doctor, do you have anything you want to get rid of there? I hand you what has been marked, I believe, Plaintiff's Exhibit 50 herein, and I believe it has just been identified.

The Clerk: It is not an exhibit.

Q. (By Mr. Kimball): It is Plaintiff's identification 50, and I ask you, Dr. Robinson, if you can tell me what that is?

A. Oh, that is a letter from myself to other members of the Walla Walla society.

The Court: What one is that, the last one?

Mr. Kimball: I ask that it be admitted. It is Plaintiff's Exhibit No. 50, a letter dated December 7, 1950, from Dr. Miles H. Robinson to "Dear Doctor."

The Court: Oh. All right, it will be admitted, then, Plaintiff's Exhibit 50.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 50.) [1239]

Q. (By Mr. Kimball): Dr. Robinson, you wrote this letter? A. Yes.

(Testimony of Miles H. Robinson.)

Q. Was that mailed at or about the date it bears? A. Yes.

Q. And whom was it mailed to?

A. To the other members of the Walla Walla society.

Q. That is the same group of 42 that you have previously mentioned? A. Yes, I think so.

Q. Now, Doctor, in regard to this, I believe you sent some exhibits or some enclosures with it as indicated by the context of the letter?

A. Where is that indicated?

Q. Well, among other places, in the second paragraph where you say, "Enclosed is a copy of the charges which I have filed," and so on.

A. I can't find that in the second paragraph.

Q. Are you looking at the same letter, December 7th? A. Yes.

Q. The second paragraph on page one starts out, "Enclosed is a copy * * *"

A. Oh, mine doesn't say that.

Q. Maybe I am on the wrong—

The Court: Second paragraph?

Mr. Kimball: We have got a little confusion here, your [1240] Honor. We have two letters of the same date—

Mr. McNichols: They are not the same letters, are they?

Mr. Kimball: Apparently not.

Mr. Rosling: Mr. Kimball, may I suggest that possibly the one that I handed to the Court, which

(Testimony of Miles H. Robinson.)

was my copy, I believe is an original. It contains the handwriting of Dr. Robinson on it.

Mr. Kimball: Well, if we find it agrees with either one of these, but we have two that don't match on the first page, Mr. Rosling.

Q. Dr. Robinson, maybe we can solve this. The Exhibit 50, which has been admitted here, can you tell from examining it whether it is the page one of the letter of December 7th that you actually mailed out, or is it as shown in the mimeographed copy that I hand you marked Defendants' Exhibit 24 initialed Green?

The Court: I will take a ten-minute recess at this point.

Mr. Kimball: Yes, your Honor.

(Whereupon, a short recess was taken.)

The Court: All right, have you ironed out the discrepancy in the documents here?

Mr. Kimball: Well, we will try to.

Q. Doctor, I hand you again what has been marked Plaintiff's [1241] Exhibit 50, and referring to the first page of that exhibit, have you had a chance during the recess to check this with other copies that counsel have and that have been handed to the Court? A. Yes.

Q. What is the discrepancy, if any, on that?

A. Well, this appears to be a copy in which a paragraph has been left out, probably because this copy was made years later.

Q. Doctor, I hand you another copy of what

(Testimony of Miles H. Robinson.)

purports to be a letter of the same date from you, dated December 7, 1950, to "Dear Doctor," and ask you to examine that and see if that is not a copy of the actual letter that you sent out?

A. Well, that appears to be a copy of the actual letter and it has the missing paragraph which I wrote.

Q. And examine the other documents with that and see if they are the enclosures that you refer to?

A. Well, this letter of December the 7th carried with it an enclosure of the letter of November 7th which I directed to the trustees of the Walla Walla society.

Q. My question is, are those enclosures that are referred to in the letter of December 7th?

The Court: Are they the right enclosures, is that what you mean, the ones that were enclosed? [1242]

Mr. Kimball: Or copies of them.

A. Well, there were several enclosures and I will have to look through this quickly.

Q. Go right ahead.

A. The second enclosure, as stated on page two, is the copy of the President's letter to me, which was this enclosure of November 10, 1950.

The Court: If it is going to take so much time to check these, why can't you take the first page and substitute the one that you now say is all right and then put in the rest of it that has been submitted by the plaintiff himself and identified? I shouldn't think it would take so long whether this is 50 or not that had been put in in the pretrial.

(Testimony of Miles H. Robinson.)

Mr. Kimball: That would be agreeable except the one put in in the pretrial carried no enclosures; this one does.

The Court: Oh, I see, you didn't have any enclosures on the one presented?

Mr. Kimball: No, your Honor.

The Court: I see. All right, go ahead, then.

A. I think I can——

The Court: I thought it was supposed to be just the same.

A. I think I can get it in just a minute here. There are two other enclosures, I just wanted to be sure that they [1243] were really enclosed at the time. There are two other papers, rather, Mr. Kimball has handed me here.

The Court: Well, the Page letter is a copy of the document in evidence, isn't it?

Mr. Kimball: Yes.

The Court: There shouldn't be any great difficulty about that.

A. I believe the document that was submitted did not carry with it the enclosures which Mr. Kimball just handed to me here and that that is what was missing, as well as this missing paragraph in the first page. I am now able to say that a third enclosure is the first page of the Brooks complaint. There is one more here. And I believe that the last paper that Mr. Kimball has handed me here, which is page 5 of the Brooks complaint with certain portions cut out with a pair of scissors, was also enclosed with this letter of December the 7th.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): In the form it is with the cutout in? A. Yes, I remember that.

Q. Well, then, Doctor, can you say that the group of papers——

The Court: How about the November 7th letter of Dr. Robinson to the board of trustees?

A. Yes, your Honor, that was also an enclosure.

The Court: All right.

Q. (By Mr. Kimball): Can you say that all those constitute [1244] the enclosures and the letter as was sent out by you on or about December 7th?

A. Yes, all that I have mentioned.

Q. And the Exhibit 50 that has actually been admitted is not a true copy of the letter or the enclosures? I am not inferring anything wrong by that. A. Yes, that is right.

Mr. Kimball: Could we substitute, possibly——

The Court: Yes, withdraw that one and substitute the other one.

Mr. Sembower: Your Honor, the difficulty on substitution is this: When we subpoenaed the documents, they were supplied by the defendants and microfilms were made of them and then these copies were dictated off of those microfilms. Now, on the original copy, which was supplied by the defendants, there appeared handwriting notes placed on the copy by Mr. Fullerton and these were added to the exhibit which was supplied.

Now, we are pleased to withdraw the exhibit we have if defendants could supply again the original which we microfilmed in the first instance, because

(Testimony of Miles H. Robinson.)

we feel that Mr. Fullerton's notes may be material. When they submitted the exhibit at first, they classed it as number 1, not questioning the authenticity of those marginal notations, so that is the reason we left it—— [1245]

Mr. Kimball: May we suggest we leave it in, then, and mark the new one 50-A?

The Court: Yes, I think so.

Mr. Kimball: That is all right.

The Court: Leave that one in and mark this one 50-A. Both 50 and 50-A will be in evidence?

Mr. Kimball: I was only asking about 50-A. If 50 is in, I have no objection.

Mr. Sembower: No objection.

The Court: 50-A will be admitted, then. How about No. 50, is it just to stand as an identification so far?

Mr. Sembower: Yes.

The Court: All right, I just want to be sure. Shall we show it now as an identification?

Mr. Tuttle: I'm sorry, does 50 go back?

The Court: No, it just stays as an identification unadmitted, and 50-A is admitted in evidence.

Mr. Kimball: Mr. Clerk, here is 50-A, which should be marked admitted, I believe.

The Court: Yes.

(Testimony of Miles H. Robinson.)

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 50-A.)

Q. (By Mr. Kimball): Doctor, I hand you Plaintiff's Exhibit 55— [1246] A. Yes.

Q. —a letter dated December the 14th, 1950, addressed to you, Dr. Robinson, and signed by Sam R. Page. Do you have that? A. Yes.

Q. It is a short letter, please read it.

A. (Reading):

“Dear Dr. Robinson:

“At a meeting of the board of trustees of the Walla Walla Valley Medical Society, held on December 13th, 1950, the charges presented in your letter of November 7th, 1950, addressed to the above board were carefully considered in detail, and it was the unanimous opinion of the board that the charges were without merit.

“Very truly yours,

“SAM R. PAGE,

“Chairman, Board of Trustees, Walla Walla Valley Medical Society.”

Q. That refers, I believe, to a meeting of the board of trustees of December the 13th, Doctor.

A. It says so, yes.

Q. I read to you from Defendants' Exhibit 447, which has been admitted, the minute book of the society, minutes of the meeting of the board of trustees of the Walla [1247] Walla Valley Medical Society, held December 13th, 1950:

(Testimony of Miles H. Robinson.)

“Members present. Doctors Page, Tompkins, Lange, and Ralston. Absent: Dr. Keyes.

“Following extensive discussion of the complaint of Thomas R. Brooks reflecting upon the professional conduct of Dr. Miles Robinson, and the answer of Dr. Robinson to the complaint made, on motion duly made, seconded and unanimously carried, it was * * *”

And a resolution follows.

Then in the last paragraph of these minutes, it is said:

“The charges made in the letter of Dr. Miles H. Robinson to the board of trustees of the Walla Walla Valley Medical Society, dated November 7, 1950, were carefully considered in detail, and it was the unanimous opinion of the board that the charges were without merit.

“SAM R. PAGE,

“President.”

Did you know of the action of the board of trustees as indicated by those minutes?

A. Well, this letter to me states that action.

Q. Do you have any reason to believe that that was not the action taken by the board?

A. Well, I only know what those minutes [1248] state.

Q. Very well, thank you.

A. I do have some reason to question the authenticity of that meeting.

Q. I just asked what you knew, Doctor, and I think you answered that question.

(Testimony of Miles H. Robinson.)

You did consider the letter you have just referred to, the letter of December the 14th, as a communication to you from the board showing what action they had taken? A. Yes.

Q. Dr. Robinson, I hand you what has been marked Plaintiff's Exhibit 61 herein——

The Court: What was the date of those minutes, December the——

Mr. Kimball: December the 13th, 1950.

The Court: The letter was the 14th?

Mr. Kimball: Yes, your Honor.

Mr. McNichols: Mr. Kimball, what is the date on 61?

Mr. Kimball: It is dated December 22nd, 1950.

Q. Doctor, this is a mimeographed copy of a letter, is it not? A. Yes.

Q. Written by you? A. Yes.

Q. To the members of the Walla Walla Valley Medical Society? [1249]

A. That's right.

Q. Was it sent out by you at or about the date it bears? A. Yes.

Q. To whom was it mailed?

A. To the people to whom it is addressed.

Q. Would that be substantially the 42 members of the Society? A. Yes.

Q. Paragraph one of this letter, Doctor, I notice that you have some criticism of the bylaws proposed in connection with the grievance committee.

A. I don't see anything about the bylaws.

Q. (Reading):

(Testimony of Miles H. Robinson.)

“The outline of procedures for our grievance committee show quite clearly that this committee is intended to be the court in which alleged misbehavior by a physician will be processed and in most cases settled by giving the patient a written criticism favorable, non-committal, or unfavorable to the doctor.”

What were you referring to there?

A. I say I see nothing in there about the bylaws.

Q. Well, maybe I misspoke the intent. You say the outline of procedures; what procedures were you referring to?

A. Well, that is that set of mimeographed rules and regulations of the grievance committee which Dr. Stevens [1250] distributed.

Q. Oh, I see.

A. Around to the members on the meeting of December the 14th.

Q. Proposed rules for the grievance committee?

A. Yes.

Q. Thank you. Now, in the second paragraph you say “If the criticism is unfavorable, it obviously constitutes discipline of the doctor.”

A. Yes.

Q. That was your view at that time?

A. Well, that has been my view at all times.

Q. Well, Dr. Robinson—

A. I would like to explain that.

Q. You may.

(Testimony of Miles H. Robinson.)

A. That answer, Mr. Kimball. My theory is very simple. I feel if you take candy away from a baby, you discipline him, and if you take a doctor's fees away from him, you discipline him.

Q. And you say here that if the criticism is unfavorable by a committee, that is discipline?

A. Well, implicit in that remark is my experience with this grievance committee, writing an official letter to my patient telling them not to pay my bill.

Q. Well, Doctor, how do you characterize the view of any [1251] person that disagreed with you that this letter was disciplinary, the letter of September 30th? A. I don't understand.

(The question was read.)

A. How would I characterize some other view?

Q. Any view that thought it was not disciplinary?

A. Well, I think that view is incorrect and wrong.

Q. Doctor, did anyone tell you that besides yourself, or was that formulated on your own opinion?

A. Tell me what?

Q. That they considered the letter of September 30th was disciplinary?

A. You mean did anyone else tell me that it was disciplinary or——

Q. Yes; or did you formulate that from your own opinion?

A. Oh, I read the letter and formulated that entirely on my own, in my own mind, on my own opin-

(Testimony of Miles H. Robinson.)

ion. I had no advice from anybody to tell me that.

Q. Did you have advice from anyone telling you that they thought it was not disciplinary, anyone in a position to have an educated opinion?

Mr. McNichols: I think that is an impossible question to answer, educated opinion.

The Court: I think it should be made more specific, perhaps, I don't know what it refers to. [1252]

Mr. Kimball: Well, I will ask the question this way:

Q. Doctor, have you ever, for example, discussed this letter of September the 30th and whether or not it was disciplinary with Dr. Campbell?

A. I think I did discuss it with him.

Q. Well, what did he tell you about it as far as his opinion was concerned?

A. Well, he wrote me that letter which has been put into evidence here, I think of October the 24th, in which he said——

The Court: The question was what did he say to you about it? A. Well, I didn't——

The Court: I think we should try to answer the questions, get along faster, I think. Wasn't that the question you asked?

Mr. Kimball: Yes; that is all right.

The Court: What did Dr. Campbell say to you? Did he say anything to you about it?

A. Well, your Honor, I didn't talk to him personally, I only had the letter.

The Court: Oh, I see.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Did you write——

A. He didn't say anything, then, is the answer.

Q. Did you write to him about it? [1253]

A. Yes.

Q. And did he write to you in reply?

A. Yes; he did.

Q. I think you referred to the letter of Dr. Campbell dated October the 24th, 1950?

A. Yes.

Q. Marked herein as Plaintiff's identification 28. [1254]

* * *

Q. (By Mr. Kimball): I ask you, Dr. Robinson, to please read to us the contents of this letter starting in a paragraph near the bottom of page one.

A. (Reading): [1255]

* * *

Q. (By Mr. Kimball): Thank you, Doctor. Doctor, did you receive advice from anyone else relative to the question of whether or not the letter of September the 30th from the grievance committee was disciplinary in nature?

A. No; I am sure of that.

Q. I hand you Exhibit 49 and ask you what it is?

A. Well, now, I take that back. I received several letters from the AMA. I was thinking of other doctors like Dr. Campbell.

Q. Well, did you consider the AMA a person that would have an advised knowledge on the subject?

(Testimony of Miles H. Robinson.)

A. Well, I thought the AMA was the proper authority to interpret our laws, our constitution and bylaws, and in fact it states that the Judicial Council of the AMA is the supreme authority on the constitution and bylaws of all organizations beneath it.

Q. Well, would you tell me what the exhibit is that has just been handed you?

The Clerk: I didn't get that number.

The Court: 49.

Mr. Tuttle: That is not in yet.

The Court: No; it is not admitted.

Mr. Kimball: I will offer it, your Honor. It is [1260] Plaintiff's Identification 49.

The Court: It will be admitted. The date is November 28th, 1950.

Mr. Kimball: November 28, 1950.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 49.)

Q. Please read the letter, but delete the comments that apparently are in your own handwriting on the side.

A. Well, since you mentioned the comments—

Mr. McNichols: May I see the letter just a moment, Doctor?

A. This is the letter from Mr. Holloway, head of the legal department of the AMA to myself.

Q. Would you read it, please?

A. (Reading):

(Testimony of Miles H. Robinson.)

“Dear Dr. Robinson:

“I have received your letter of November 14th in further reference to the activities of the grievance committee of your local medical society and the situation in which you are involved.

“Certainly you have a perfect right to appeal to your medical society against any action that has been taken by the grievance [1261] committee, and it seems to me that is a proper way in which the matter can be adjusted. It is not my understanding of a function of a grievance committee that it has jurisdiction to discipline a member. The matter of disciplining is controlled by the provisions of the constitution and bylaws of the medical society, and I agree with you that the procedures outlined in such documents should be followed faithfully.

“The question that arises in my mind is whether the action taken by the grievance committee in your case can be said to be a disciplinary action. There can be read into it, I further agree, an implied criticism of your conduct in the case out of which this matter arose. To repeat, however, I believe that the disagreement between you and the grievance committee can properly be brought before your local medical society, and I hope the situation can be adjusted amicably.

“Sincerely,

“J. W. HOLLOWAY, JR.”

Q. Did you receive that letter a few days after it was dated?

(Testimony of Miles H. Robinson.)

A. I couldn't tell you exactly. It probably came by regular mail, might have been three days. [1262]

Q. You did receive it, though? A. Yes.

Q. Incidentally, Doctor, I forgot to ask you, did you write a letter dated November 19, 1950, to all the doctors of the society on the subject of the grievance committee? I hand you such a document marked Exhibit 46.

Mr. Tuttle: That is an identification.

Mr. Kimball: Identification 46, Plaintiff's Identification 46.

A. Yes.

The Court: Do you wish to offer that, Mr. Kimball?

Mr. Kimball: I would like to have that offered, please.

The Court: Exhibit 46 will be admitted.

(Whereupon the said letter was admitted in evidence as Plaintiff's Exhibit No. 46.)

Q. (By Mr. Kimball): And, Doctor, didn't you send to J. W. Holloway, Director of the legal department of the AMA, a summary of your objections against the local grievance committee on or about December the 26th?

A. Well, I wouldn't remember the dates, but all the letters, I believe, are here.

Mr. Kimball: I don't believe this has been marked.

Q. I will just show you the letter and ask you if you sent [1263] it? A. Yes; I think so.

(Testimony of Miles H. Robinson.)

Mr. Kimball: This has not been marked. I would like to have it marked.

The Court: All right, it may be marked the next number.

Mr. Sembower: No objection.

Mr. Kimball: There is no objection.

The Clerk: It will be Defendant's Exhibit 510.

The Court: It will be admitted, then.

(Whereupon, the said letter was admitted in evidence as Defendant's Exhibit No. 510.)

Q. (By Mr. Kimball): Please read the letter. It is very short.

A. (Reading):

"Dear Mr. Holloway:

"I impose upon your time once again, and enclose a copy of a summary of my objections to our Grievance Committee. If for no other reason, you may be interested in my remarks for the parallel to recent and current federal legislature aimed at cleaning up the food situation.

"Sincerely yours,

"M. H. ROBINSON, M.D." [1264]

Q. Thank you, Doctor. Was this letter that you have just read, Doctor, acknowledged by Mr. Holloway? A. I couldn't tell you.

Q. I hand you a letter for purposes of refreshing your recollection.

A. Well, this could be an acknowledgment because it is——

(Testimony of Miles H. Robinson.)

Q. You don't have to testify about it, I asked you to refer to it.

Mr. Kimball: I ask that this be marked, and if there is no objection——

Mr. Sembower: No objection.

The Court: All right, Defendant's Exhibit 511 will be admitted, then.

Mr. Rosling: What is the date, please?

Mr. Kimball: The letter is dated January the 19th, 1951.

(Whereupon, the said letter was admitted in evidence as Defendants' Exhibit No. 511.)

Q. Just read the contents of that, please, Doctor.

A. (Reading):

“Dear Dr. Robinson:

“This is merely to acknowledge with thanks your recent letter and the additional material concerning the controversy with respect to the [1265] operations of the grievance committee of the Walla Walla Valley Medical Society.

“As Dr. Henderson indicated to you, this is a matter that must be initially considered by your local medical society and your state organization. I am, however, glad to have for our files the additional information that you forwarded to me.

“Again, may I express the sincere hope that the controversy can be satisfactorily adjusted.

“Sincerely yours,

“J. W. HOLLOWAY, JR.”

(Testimony of Miles H. Robinson.)

Q. Doctor, I hand you what has been marked Plaintiff's Exhibit 83.

Mr. Kimball: Is that admitted?

Mr. Rosling: Yes.

The Clerk: Yes.

The Court: It has been admitted.

Q. (By Mr. Kimball): What is that, Doctor?

A. A letter from myself to Dr. Rownd, secretary of the grievance committee of the state medical association, dated April 9, 1951.

Q. I am a little ahead of myself. I hand you Plaintiff's Exhibit 67 and ask you what that is?

A. Registered letter from Dr. Rownd to myself dated March [1266] 14, 1951.

Q. Will you read that, please?

* * *

Q. Did you receive that letter, Dr. Robinson?

A. Yes.

Q. At or shortly after the date it bears?

A. Yes. [1267]

Q. I will ask you, Doctor, if this last letter you read from Dr. Rownd, who signed as secretary of the grievance committee, did he not? A. Yes.

Q. Was not an acknowledgement of the complaint that you had filed November 13th and 22nd of your charges against the local grievance committee? A. No.

Q. It was not. Now I will ask you to examine 83, which I inadvertently handed you a moment ago out of order, and tell the Court what is that letter?

(Testimony of Miles H. Robinson.)

A. A letter dated April 9, 1951, from myself to Dr. Rownd.

Q. To whom did you address it?

A. Dr. Rownd, Secretary, Grievance Committee, Washington State Medical Association.

Q. And how did you start out?

A. (Reading:)

“Dear Dr. Rownd:

“Your letter of March 14th——”

Q. Excuse me, is that the letter that you just read? A. Yes.

Q. Exhibit No. 67 herein. All right, go ahead, excuse my interruption. [1268]

* * *

Q. Thank you, Doctor. Now, the part of the letter where you refer to the fact that you are correcting part of the transcript of November the 21st, you remember reading that? A. Yes.

Q. That transcript, is that Exhibit 243 or 244 in this action?

Mr. Kimball: May I have that, please?

The Clerk: 244?

Mr. Kimball: 243 and 244.

The Court: There are really three of them, aren't there—242, 243, 244?

Mr. Kimball: I think I would settle for two.

The Court: There are three of them mentioned, all records of hearings before the trustees.

Mr. Kimball: These will serve my purpose, your Honor.

(Testimony of Miles H. Robinson.)

The Court: Yes, all right.

Q. (By Mr. Kimball): Dr. Robinson, I show you 244 and 243 and ask you if those are the transcripts referred to in the letter you just read, Plaintiff's Exhibit—

A. Exhibit 244 is the one that I referred to in the letter.

Q. Fine, Doctor. Do you have a copy of the Exhibit 244 as corrected by you?

A. There were some corrections. [1273]

Q. If you can answer my question, I would appreciate it, Doctor. I asked, do you have a copy of the corrected transcript?

A. Yes.

Q. Is it in court?

A. I don't know.

Q. Has it ever been shown to defendants?

A. I don't know that.

Q. Where is it?

A. Well, I have—I can't answer your question because the transcript was never corrected on the face of it, but I compiled a four page list of corrections by page and line. [1274]

* * *

Q. Did you send a copy of your compilation of corrections to the state officers?

A. Well, that letter that we were talking about mentions [1275] enclosing some corrections.

Q. That is, the letter of April the 9th from you to Dr. Rownd, Exhibit 83?

A. Well, I would have to see it to be sure.

Q. Well, I will just put it this way, your letter

(Testimony of Miles H. Robinson.)

of April the 9th, or thereabouts, that you were talking about just before lunch?

A. I would just have to see it, Mr. Kimball, to give any opinion.

Q. Doctor, I hand you Exhibit 83 and ask if that is what you referred to? A. Yes.

Q. They are not attached to the exhibit?

A. No.

Q. Dr. Robinson, I hand you what appears to be the original of that letter, which you hold the exhibit being a photostatic copy with a lot of attached documents. Would you leaf through those and see if that appears to be your original letter that you sent?

A. The letter is the letter that I sent, but I am puzzled over the enclosures which are stapled to it. I perhaps——

Q. Well, as quickly as you can, will you look through it and see if those are the enclosures you sent?

A. It says here: "I enclose all material subsequently [1276] prepared on disputes in question," and that is subsequent to the 22nd of November. Well, now you have in here the complaint to the bar association and I don't recall really whether that was sent to them. I couldn't tell you if that is so. That was the complaint against you, Mr. Kimball, and I don't recall sending that to Dr. Rownd.

But it does include here five pages of preliminary corrections to the transcript of the November 21st hearing and other papers in the controversy which

(Testimony of Miles H. Robinson.)

I may have sent him, but I couldn't tell you now. It doesn't say on the letter just which ones were sent.

Q. And you can't say whether or not they were enclosed? A. I really cannot.

Q. Do they refresh your recollection that they might have been sent with that letter as enclosures?

A. Yes, they might have been, uh-huh. [1277]

* * *

Q. (By Mr. Kimball): Dr. Robinson, in sending this letter and its enclosures, whatever they were, with particular reference to the correction list that you sent regarding the transcript of the November 21, 1950, hearing, did you have a copy of the transcript at the time, and I am referring to Exhibit 244, the transcript of this hearing that is in this case, but which refers to the meeting of November the 21st? 242? A. May I see the letter?

Q. Surely.

A. By which you are dating your question?

Q. I hand you 83-A.

A. Well, my recollection is that this transcript was sent to me about one month after the meeting which it reported and the records will show that. It came, I think, in December of 1950.

Q. But you did have a copy, was my question?

A. I had received a copy.

Q. And you had a copy at the time you made these corrections? A. Oh, yes.

Q. What was your purpose in sending this transcript, or the corrections that they referred to, to the state [1279] grievance committee?

(Testimony of Miles H. Robinson.)

A. I would like to see the letter from the state grievance committee to see whether he requested something I don't know.

Q. Can you tell me about when——

A. I don't have it here. It was the March 14th letter.

Mr. Kimball: I think that is 67.

Mr. Rosling: That is 67.

Q. (By Mr. Kimball): Would this be 67 you request?

A. Yes. Well, he says here: "Please bring with you any pertinent information in addition to the material you have already sent." And in my letter here, I say: "I enclose all material subsequently prepared."

Was your question why did I do this?

Q. Yes, why did you send it to him?

A. Well, he is asking for more material and so I sent him more.

Q. Very well. My question is this, did you intend that they should use the material that you sent them in connection with the controversy referred to in the letter of March 14th?

A. Well, I sent them the material, as they had asked me to do. I assumed that they would probably use it.

The Court: Asked you to bring it, rather than send it? Doesn't the letter request that you bring any [1280] additional material to the hearing with you?

A. You are right, your Honor, it does.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): And you sent it instead of bringing it, actually, isn't that right?

A. Yes, I did.

Q. Dr. Robinson, did you show the trustees of the local society the corrections that you had compiled?

A. I don't believe I did, but I couldn't say for sure.

Q. Now, at the top of Page 2 of Exhibit 83-A or 83, as you may choose to refer to it, you have said:

“Needless to say, the corrections which I enclose herewith are an attempt only to correct Miss Curts' errors, so as to render the report of the hearing reasonably intelligible, and to point out her omissions as I recall them. These omissions, by the way, can usually be proved by the context, in that a subsequent referring remark is found to have nothing earlier to which it refers.”

Dr. Robinson, was it your impression that with the corrections you sent the state grievance committee, that the transcript, No. 243 herein, was a reasonably correct recording of what happened at that meeting? A. No.

Q. With the corrections, it was not? [1281]

A. That's right.

Q. Why did you send it to the state grievance committee, then, Doctor?

A. Well, I think you ought to read the next paragraph here. It says:

“With respect to the perversion of facts which Brooks and his family have been encouraged to

(Testimony of Miles H. Robinson.)

present, the corrections mentioned are not concerned.”

And I spent hours and hours and days——

The Court: Didn't you mean by that that the Brooks weren't telling the truth at the hearing? That didn't apply to the correctness of the record, did it?

A. Oh. Yes, that is true.

The Court: I like to think that I can give English the meaning to which it ordinarily has. If you have a different version of it, though, I want you to let me know.

A. Oh, I probably didn't understand Mr. Kimball's question.

The Court: Well, all right, go ahead.

Mr. Kimball: I think the question has been answered sufficiently.

The Court: All right.

Q. (By Mr. Kimball): Doctor, in the corrections you sent to the state grievance committee, did you make the correction of the “he” to the “I” that was referred to in [1282] your testimony earlier—“He jumped the gun” or “I jumped the gun”?

A. Yes.

Q. So that they had the benefit of your view on that correction?

A. Well, I don't know, I made the correction.

Q. You sent it to them, didn't you, Doctor?

A. Yes.

Q. Well, that answers my question.

Doctor, I notice in the third paragraph of your

(Testimony of Miles H. Robinson.)

letter of April the 9th, on the second page, that you acknowledge that the state grievance committee is aware of the material which you have forwarded to them on November 13th and 22nd. Do you follow me, Doctor? A. Yes.

Q. I notice also that you mention in this paragraph: "Included among the latter is my summary for use in court if I am driven to this extremity."

A. Yes.

Q. "This has not been distributed to anyone except an attorney here," and so on. Do you see that?

A. Yes.

Q. Doctor, where is the copy of this enclosure referred to as your summary to be used in court? Is that a part of those enclosures? [1283]

A. Yes.

Q. And I will ask you if that is the same document or a copy which has been marked here as Defendants' 474 for identification?

A. Well, this is a six page copy of 474 that you are giving me here and, while it is mimeographed, I have never seen this nor prepared it, so it may differ to some extent from my copy which I hold here.

Q. Which is enclosed? A. Yes.

Q. Very well, I will accept your version of that. I just wanted to know if it was the same document that had been marked.

The Court: One of the enclosures, then, in this present—is that 83-A?

Mr. Kimball: A, yes, your Honor.

(Testimony of Miles H. Robinson.)

The Court: Is your 274?

Mr. Kimball: Yes, I have no reason to think it isn't.

Q. Dr. Robinson, did you give this summary for use in court, this document that I have just referred to, did you give a copy of that to the board of trustees of the local society at any time?

A. No.

Q. Now, relative to the transcript of the meeting of [1284] 11-21-50, which we have just referred to, I think, in No. 242 herein, Doctor, weren't you invited by Dr. Tompkins, the president of the local society, to make corrections you saw fit in the transcript with Miss Curts, the reporter?

A. Well, no.

Q. You say you were not?

A. I was invited to make them with her and with Mr. Fullerton.

Q. Oh, very well. Did you avail yourself of that opportunity?

A. I think we arranged a time, at least, with Dr. Tompkins and then he didn't show up.

Q. Who do you mean by "he"?

A. Dr. Tompkins.

Q. Did you ever go to Miss Curts and make suggested changes in the transcript that you thought should be made? A. No, indeed.

Q. Why did you make the corrections on your own without consulting other parties to the proceedings? A. What other parties do you mean?

(Testimony of Miles H. Robinson.)

Q. Any of the trustees or Miss Curts, the reporter?

A. Well, I felt the way I had been treated in that hearing, that it was futile and hopeless to consult them.

Q. If you are through with those, I will take them off your [1285] lap.

I hand you what has been marked Plaintiff's Exhibit 88 and I think has been admitted. This purports to be a letter from James H. Berge, M.D., Chairman, Grievance Committee, dated April 11, 1951, and addressed to you, is that correct, Doctor?

A. Yes.

Q. In the first part of the first paragraph, Doctor, is contained this language:

“This will acknowledge your letter of April the 9, 1951. In order to clear your mind as to the jurisdiction of the Washington State Grievance Committee, I would like to call your attention to the following facts,”

and then it goes on.

In the next paragraph, he says that no tape recorder will be permitted at the hearing.

In the next to the last paragraph on Page 1:

“You will be expected to attend the hearing and remain throughout the questioning and testimony of all witnesses. You will be allowed to ask questions and cross-examine such witnesses. The propriety of your questions will be ruled upon by the Chair. You will be permitted to bring with you any [1286] witnesses which you may wish to substantiate your

(Testimony of Miles H. Robinson.)

charge against the Walla Walla Valley Medical Society.”

Doctor, did you receive this letter? A. Yes.

Q. Did you consider that it gave you notice of the hearing and the subject matter of the hearing of the state grievance committee held in Walla Walla on April 22, 1951?

A. Well, I believe the letter of March 14th from Dr. Rownd gave me notice.

Q. Doctor, I hand you what has been marked Plaintiff's Exhibit 92 herein—— A. Yes.

Q. ——a letter from yourself to Dr. James Berge, dated April the 13th, 1951. In that letter, what did you say about attending the meeting, as to whether you would or would not?

A. Well, I said a number of things.

The Court: That wasn't the question, Dr. Robinson.

Will you read the question?

(The question was read.)

A. I said I would not attend the hearing.

Q. (By Mr. Kimball): In this exchange of correspondence on the subject, did you then receive a letter, which has [1287] been marked herein as Plaintiff's Exhibit 95, from Dr. James H. Berge, Chairman, Grievance Committee, to yourself, "Re: Dr. Miles Robinson vs. Walla Walla Medical Society," and so on? A. Yes.

Q. Was further explanation given to you by the writer of the letter as to their viewpoint on their

(Testimony of Miles H. Robinson.)

right of jurisdiction in the matter? A. Yes.

Q. I think you have previously testified that you did not attend this state grievance committee hearing, is that correct?

A. Well, I know that I did not attend it.

Q. And you didn't attend either phase of it, either your complaint against the grievance committee or the case of Brooks vs. Dr. Robinson? You didn't attend any phase of that hearing?

Mr. Sembower: Your Honor, I object to the characterization by counsel of the words "your complaint." We are familiar with the dangers of waiver in a situation like this and it is the position of the plaintiff that he never filed a complaint against the grievance committee in this form.

Mr. Kimball: I will withdraw that inference from my question, your Honor. [1288]

The Court: All right, the form of the question is bad.

Mr. Kimball: I merely wanted to find out if he attended any hearing on April 22nd of the state grievance committee.

The Court: There was one hearing for both matters?

Mr. Kimball: Yes.

The Court: And unless my memory is slipping very badly, I remember the doctor testified that he didn't attend and gave detailed reasons why he didn't attend, which I clearly remember.

Mr. Sembower: That is correct. There were the two matters up.

(Testimony of Miles H. Robinson.)

The Court: All right, go ahead.

Q. (By Mr. Kimball): Doctor, did you on the following day after this date of April the 22nd, in other words, on April the 23, 1951, write a letter to Dr. James Berge, which is marked herein as Plaintiff's Exhibit 99?

Mr. McNichols: I just wondered if it was admitted yet.

Mr. Kimball: I couldn't answer that.

A. Yes.

Q. Would you read the last two short paragraphs at the end of this letter, please, Doctor?

A. (Reading:) [1289]

“Of course, tyranny is usually based on a cowardly fear to submit inordinate ambitions to public scrutiny. In the future I intend to have nothing to do with star chamber committees, secret committees, closed hearings, and so on. Let the proponents of these come out into the open and risk their policies in the public view.”

Q. And in the second paragraph of the same letter, did you say:

“It seems that I am obligated to remind many, many of the people that have interested themselves in my difficulties——”

A. I didn't say “obligated.”

Q. “Obliged,” excuse me, Doctor. (Reading continued:)

“——that I am obliged to remind many of the people that have interested themselves in my difficulties with certain of my local colleagues that I

(Testimony of Miles H. Robinson.)

have no fault to find with the Walla Walla Valley Medical Society.”

Is that part of that letter? A. Yes.

Mr. Kimball: I believe that has been admitted.

The Clerk: Is it 99? [1290]

Mr. Kimball: 99.

The Court: 99.

The Clerk: No; it is not admitted.

Mr. Kimball: I move its admission, your Honor.

The Court: It will be admitted, Plaintiff's Exhibit 99.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 99.)

Q. (By Mr. Kimball): Doctor, these communications which I have discussed with you this morning, at least the parts that represented your writing the letters regarding your complaint to the grievance committee, in reviewing them, as you do now, how do you think they comply with your statement in your letter to Dr. Page dated October the 9th, 1950, Exhibit 16 herein, wherein you said: "And for my part, I will do what I can to keep the thing quiet"?

Mr. McNichols: I might say, your Honor, I don't think I clearly understand the question.

You say how does it comply, Mr. Kimball?

Mr. Kimball: Yes; that was my question.

The Court: Do you understand the question?

A. No, sir; I really don't.

The Court: I don't think I do, either. Will you [1291] read it, please?

(Testimony of Miles H. Robinson.)

(The question was read.)

Mr. McNichols: In the first place, your Honor, I think he has answered his question as to why he changed his mind about keeping it quiet when he didn't hear from Dr. Page.

The Court: Would your answer be the same as you gave before? A. Yes, sir.

The Court: I remember what it was.

Q. (By Mr. Kimball): On this same subject, Doctor, I will hand you what has been marked Defendants' Identification 434 and ask you if you know what that is? A. Yes.

Q. Will you state to the Court what it is, please?

A. This is the November issue of the magazine, Medical Economics, 1952.

Q. And will you turn to Page 108 therein?

A. (Witness complies.)

Q. 208, please. Do you recognize the article therein? A. Yes.

Q. What is it?

A. Oh, it is an article about myself.

Q. And is there anything else there?

A. Well, there is a picture of myself [1292] there.

Q. Dr. Robinson, do you know anything about the publication of that article? A. Yes.

Q. Do you know anything about the basis of the information that was furnished for the writing of that article?

Mr. McNichols: I think I will object to that ques-

(Testimony of Miles H. Robinson.)

tion. Obviously, he knows something about it. Can you be more specific, Mr. Kimball?

Mr. Kimball: Yes; I can. I will ask Dr. Robinson if he didn't furnish a part, if not all, of the information on which that article was written?

Mr. McNichols: Might I ask that the question be qualified by setting forth the date and the approximate time?

Q. (By Mr. Kimball): Yes; and give the date and the approximate time, Doctor.

A. I can't tell you the date.

Q. Can you give me the approximate date with reference to the date of the magazine?

A. Oh, let me see, about three or four months before November of '52, might have been two months, something like that.

Q. Did you furnish the editor or some representative of the magazine with the information on which that article was written? [1293]

A. I gave them some information but not all of it.

Q. Do you know where the photograph of yourself was procured?

A. Oh, yes, they asked me for a photograph and I gave them one.

Q. Do you know where that magazine is circulated? What kind of a magazine is that?

A. Well, this magazine is financed by the drug interests and contains a lot of news about the medical profession and doctors and it is sent free of

(Testimony of Miles H. Robinson.)

charge to practically every doctor in the country. At least, that is what they say.

Q. By the country, you mean the United States, I presume? A. Yes.

Q. Doctor, I show you what bears the mark of Defendants' Exhibit for Identification 426 in this action and ask you to look at it.

Mr. Kimball: Oh, I would like to move the admission of this last exhibit.

Mr. McNichols: I would like to ask him some questions on voir dire, your Honor, if I may.

The Court: All right.

Mr. Kimball: Surely.

Mr. McNichols: First of all, I haven't had an opportunity to examine this, but I will ask, Dr. Robinson, [1294] have you read the article that appears in this magazine? A. Yes.

Q. Is it your writing that appears therein?

A. No.

Q. Do you know of your own knowledge who wrote it? A. No.

Q. Do you know of your own knowledge where the facts were obtained that appear in that article that weren't furnished by yourself?

A. The only thing I know is that this exhibit just handed to me, No. 426, I believe I sent this document to Medical Economics, and that is the only thing that I know that I sent them and I don't know that, but I think so because they quote this document in that article.

(Testimony of Miles H. Robinson.)

Q. Other than that, is there any further material in there that is your writing at all?

A. No; not that I know of. [1295]

* * *

Q. (By Mr. Kimball): Dr. Robinson, didn't you send some documentary matter pertaining to your difficulties with the medical society to *Medical Economics*, this magazine?

A. As I said before, I think I sent them this letter of August 18, '52.

Q. Did you send them a copy of a complaint for a lawsuit or anything?

A. I may have sent them a copy of the complaint, but I couldn't tell you for sure.

Q. Did you send them the photograph that is published there? A. Yes, I did.

Q. Did they have your consent to make the publication?

A. They wrote me about it and my recollection is they didn't ask my consent.

Q. Did you object? A. No.

Mr. Kimball: I move the exhibit be admitted.

The Court: I beg pardon?

Mr. Kimball: I move it be admitted.

The Court: What is that document he has? Is that already in evidence? [1297]

Mr. Kimball: That was the next one. It isn't yet, but I was about to offer it.

The Court: Oh, I see.

(Testimony of Miles H. Robinson.)

Mr. Kimball: I will offer that now, after asking the doctor——

The Court: Is it marked already?

Mr. Kimball: Yes, it is marked.

Mr. Rosling: Classified and marked.

The Court: What is the number?

The Clerk: This is 434.

Mr. Kimball: This is 426.

The Clerk: Oh, this one?

Mr. Kimball: And it is Defendants' Identification 426 and I was about to ask the doctor if he can identify what it is. A. Yes.

Q. What is it?

A. Well, that is a letter I prepared and sent to the doctors in Washington State.

Q. Multiple letter, is it a mimeographed letter you prepared?

A. It is a mimeographed letter.

Q. Containing about how many pages?

A. Six pages.

Q. And to whom did you send it? [1298]

A. Well, I sent it to all the doctors I could locate in the State of Washington.

Mr. Kimball: I ask this be admitted.

The Court: Let me see——

The Clerk: 426.

Mr. Kimball: 426, it is a defendants' identification.

The Clerk: It is under Classification 1.

The Court: Oh, yes, it will be admitted, No. 1.

(Testimony of Miles H. Robinson.)

(Whereupon, the said letter was admitted in evidence as Defendants' Exhibit No. 426.)

Q. (By Mr. Kimball): Dr. Robinson, did you likewise send a letter pertaining to your difficulties with the local society and certain of the local doctors to all of the doctors in the Maryland Society in May of '54, or some such date, when you moved back to Maryland?

A. I sent a copy of my complaint of this suit to the members of the Baltimore County Medical Association. I think it was on May the 13th, '54.

Q. Have you a copy of that letter among your documents here? A. I think so.

Q. Could you furnish it, please, without too much trouble?

A. I don't know if it is here right now, but I have a copy. [1299]

Q. I will ask, Doctor, could you furnish it after the recess, if you can find it, for our examination?

A. Well, I imagine that is up to my counsel.

Mr. McNichols: We will furnish it.

Mr. Sembower: If we can find it, we will, yes. We hadn't known that that was at all pertinent to these issues.

Mr. Kimball: Maybe it isn't, I am just asking to see it. We hadn't seen it, Mr. Sembower.

Q. Now, Dr. Robinson, I want to get on to this question of the grievance committee formation a little bit and I will try to rush this along.

First, I want to ask you, Doctor, I think you testi-

(Testimony of Miles H. Robinson.)

fied that you were in attendance at a meeting of the local society when the grievance committee was first formulated, is that correct, on or about April the 25th, 1950?

A. I was there when the motion was made and passed to organize such a committee.

Q. I want to ask you first, Doctor, were you one of the founders of the Walla Walla Medical Society when it was organized and incorporated in 1949 or '50?

A. Well, I was not a founding member when it was organized. However, when it was incorporated, I notice that my name appears among the incorporators.

Q. Well, I am referring to the society, the Walla Walla [1300] Valley Medical Society incorporation; were you one of the organizers of that?

A. No, I was not one of the organizers, but my name is on the incorporators, which I really don't know how that happened, but I may have given it to them.

Q. You didn't sign it?

A. I think I was asked to sign it.

Q. Well, if you signed it and you signed as an incorporator, wouldn't you be an incorporator?

A. Well, I think we had a meeting and everybody that happened to be at the meeting put their signature on this thing because it required a certain number of signatures, and I was merely trying to make sure I answered your question accurately because I didn't have anything to do with really in-

(Testimony of Miles H. Robinson.)

corporating it or arranging to have it incorporated.

Q. Well, you signed it? I will ask it that way.

A. Yes, I did.

Q. And you didn't sign it with any mental reservations, did you? A. Oh, no.

Q. Referring now to the minutes of the society for April 25, 1950, I read you a short paragraph, Doctor:

“Dr. Stevens moved, seconded by Dr. Moore, that the Chair appoint a committee of three [1301] to investigate, draw up rules of procedure, and to act as a grievance committee; the duty of the grievance committee to investigate grievances against the fee charges made by and the actions of members of the society and to investigate violations of the rules and regulations of the Washington State Medical Association. Motion carried.”

Your name is shown as one of the doctors in attendance at that meeting, is that correct?

A. Yes, I think so.

Q. At that time, Doctor, do you remember whether or not Dr. Stevens made an explanation to the society of his reasons for his proposal and motion that a grievance committee be formed?

A. I really don't remember much about that, about any explanation, at that time.

Q. Do you recall that a prominent mention was made by Dr. Stevens of the public relations feature of such a committee?

A. Well, I could agree to that because that has been mentioned at all times.

(Testimony of Miles H. Robinson.)

Q. You do agree?

A. That such mention was made, yes.

Q. Do you recall that Dr. Stevens made a point of bringing [1302] out that better public relations could be maintained between the medical profession and the public by affording a medium by which members of the public could air their misunderstandings and grievances against charges that were made by members of the society?

A. Well, I think I have heard him say that at sometime or other, yes.

Q. Doctor, at that time did you make any objection to the formation of the grievance committee?

A. I don't think so.

Q. Did you vote for it?

A. I couldn't tell you.

Q. The minutes show that it was passed. Would you say you voted against it?

A. Well, on votes at times, I know I just didn't vote one way or the other. I was too new in the society to have an opinion and the voting was a rather perfunctory affair.

Q. You didn't raise any objection that you now recall?

A. No, I know I didn't raise any—well, I don't think I raised any objection.

Q. Did anyone else make any speech against the formation of the committee or the purposes of it?

A. It was moved and voted so quick, I don't think there was any speeches made. [1303]

(Testimony of Miles H. Robinson.)

Q. Did you consider at that time that the formation of such a committee was the formation of a tyrannical club for power? A. No.

Q. You have used those terms since to designate it, have you not? A. It sounds like it.

Q. Doctor, I read you the minutes of the trustees meeting of June the 19th, 1950, of the trustees of the society, a portion of the first paragraph, reading:

“The Executive Secretary reported on the establishment of the grievance committee. The organization was approved and the Secretary instructed to attempt to obtain an editorial in the local paper in explanation of the news article that had been previously publicized.”

Dr. Robinson, did you know that a news article had been published relative to the formation of the grievance committee? A. At what time?

Q. Well, I will say in April of 1950?

A. No.

Q. Did you see that?

A. I saw one article and it was published, I remember, June [1304] the 16th, 1950, but I did not see that until after all this trouble started when I went up to the public library and looked back—

Q. I show you—excuse me, did you finish?

A. Yes.

Q. I will show you what has been marked herein as Plaintiff's Exhibit 45 for identification and ask if that is the article to which we are referring?

A. Yes. But this is not an editorial.

(Testimony of Miles H. Robinson.)

Q. I didn't mean an editorial, I meant a news release. A. Yes.

Mr. Kimball: I would like to offer that exhibit, your Honor.

The Court: What number is that?

Mr. Kimball: It is No. 45, Plaintiff's 45 for identification.

The Clerk: It is in No. 1, your Honor.

The Court: It will be admitted.

(Whereupon, the said news release was admitted in evidence as Plaintiff's Exhibit No. 45.)

Q. (By Mr. Kimball): Have you read the article since you learned about it? A. Yes.

Q. Do you have any objection to the contents of the article? [1305]

A. Well, I think I probably do. I would have to look at it, I think, to say.

Q. Did you consider it undemocratic?

A. What was that?

Q. The publication of the article or the contents of the article?

A. Well, I think I could say yes.

Q. Dr. Robinson, did you think that the effort to establish the grievance committee would sponsor better public relations between the medical profession and the public? A. Any grievance committee?

Q. This particular grievance committee?

(Testimony of Miles H. Robinson.)

A. No.

Q. No what? A. I do not think so.

Q. Did you think that it would have a bad effect on public relations? A. Yes, indeed.

Q. Could you tell me why, Doctor?

A. Well, I am speaking from knowing how it acted. Did you mean at the time it was formed?

Q. Yes, at the time it was formed, any grievance committee for the purposes set out?

A. Well, it didn't have any purpose one way or the other, to speak of, at the time it was [1306] formed.

Q. Doctor, I will read you the minutes of June the 20th of the society, or a portion of them. First, Doctor, were you in attendance at the meeting of June the 20th, 1950? You are shown to have been there. A. Well, I think I was.

Q. (Reading:)

“The Executive Secretary reported on the formation of the grievance committee, stating that the committee had adopted its methods of procedure and that a public announcement of its availability and use had been made in the press. The President was asked for the names of the committee members and ruled that, in his opinion, the value of the committee would be seriously lessened if the names were announced. Dr. Holmes then moved, seconded by Dr. Moore, that the ruling of the Chair be referred to the Board of Trustees as to whether or not the information should be available to the membership of the society. Motion carried.”

(Testimony of Miles H. Robinson.)

Do you remember that action at that meeting, Doctor? A. Very well. [1307]

Q. Do the minutes I just read fairly depict the happenings of the date and at the meeting on this subject? A. I would say no.

Q. You would say no? Wherein do they differ from your recollection?

A. Well, they don't describe the rather spirited discussion that took place when Dr. Page said he would not reveal the names of the members to the rest of us sitting there in the room.

Q. There was a discussion then?

A. Yes, indeed, there was.

Q. Did you participate in that discussion?

A. I think I did.

Q. Did you object to that?

A. I think I did.

Q. Do you remember whether you did or didn't?

A. Well, I couldn't say for sure. I was sitting on the edge of my chair and trying to get ready to say something, if I didn't say something, and I think I did say something.

Q. Were you refused an opportunity to express your views at the time?

A. I think you could say yes.

Q. Tell the Court how.

A. The way it happened was we had hardly got started on the [1308] discussion, when Dr. Holmes jumped up and referred it to the board of trustees for decision.

(Testimony of Miles H. Robinson.)

Q. Well, he didn't refer it, did he, Doctor; I thought you said he made a motion to refer it?

A. That is what I meant to say .

Q. Was that motion voted on?

A. It was, very quickly.

Q. Did it appear to be in the regular course of business?

A. Well, I thought at the time it was being jammed through. It was not a spontaneous thing.

Q. I will read you the minutes of the board of trustees of the Walla Walla Valley Medical Society dated July the 18th, 1950, and in connection with that date I call your attention to the fact that this trustees meeting was approximately a month after the last meeting was talked about.

A. Yes.

Q. "The motion of Dr. Holmes made at the society meeting of June the 20th to refer the ruling of the Chair that the names of the membership of the Grievance Committee should not be made available to the membership of the society, referring to the board of trustees for decision, was extensively discussed. Dr. Keyes moved, seconded by Dr. Lange, that the ruling of the Chair be confirmed. Motion carried." [1309]

Dr. Robinson, I will ask you if at any time between the date of June the 20th, 1950, when this action was taken relative to the anonymity of the members of the committee, and the meeting of the trustees on July the 18th, 1950, did you take up with

(Testimony of Miles H. Robinson.)

any member of the board of trustees your objection to this procedure?

A. May I see those minutes, please?

Q. Surely.

The Court: When was the trustees meeting?
July——

Mr. Kimball: July the 18th, 1950.

The Court: Oh.

A. My answer would be I don't believe the trustees acted on this date as is shown in these minutes.

Q. (By Mr. Kimball): Well, that wasn't my question, Doctor. I'm sorry I didn't make myself clear. I asked you——

The Court: He answered another question from the one you asked.

Mr. McNichols: Just answer the question.

The Court: He answered one he thought of in his own mind. Read the question.

(The question was read.)

A. Well, your Honor, his question contains the statement——

The Court: His question is a plain statement, whether you did or did not take up with any member of the board of trustees the matter of the secret character of the [1310] committee between the society's meeting and the trustees meeting? Did you or did you not? Now, if there are other things to be asked, your counsel can ask them and bring them out and make explanations, but simply if we are going to have orderly procedure, you must

(Testimony of Miles H. Robinson.)

answer the questions and not what you think should be said if it isn't responsive.

The Witness: Could I ask my counsel a question?

Mr. McNichols: Just answer the question, Dr. Robinson, yes or no.

The Court: Do you understand the question, Dr. Robinson? I will have the reporter read it if you don't.

A. No, sir; I thought that in order to answer the question, I would have to assume that his statement that this action was taken was correct, and there is an alteration in the minutes there.

The Court: He didn't ask you to assume anything. A. Oh.

The Court: Do you take the position that there wasn't any meeting of the trustees the second time?

A. Yes, sir; I take the position that there is—you can see here they have typed in something in the original minutes, and I take the position they did not take this action at that time and I didn't know how I could answer the question because it was based on his statement they took this action and the minutes show an alteration here. [1311]

The Court: Well, I understood what he is trying to find out is whether you took it up with the trustees between June 20th and July 18th. Isn't that what you are inquiring about?

Mr. Kimball: Yes, your Honor.

A. I could answer that.

The Court: If you want your counsel to bring

(Testimony of Miles H. Robinson.)

out there wasn't any meeting or it was rigged or something else, why, he can bring out that at the proper time. A. Well, I didn't take it up, no.

Mr. Kimball: Thank you. That is the answer I want.

Q. Doctor, do I understand, then, that you made no objection at the meeting when the grievance committee was formed and that you took no action yourself to bring your objections to the minds and attention of the trustees thereafter until July the 18th, 1950?

A. My recollection is that I objected at the general meeting of June the 20th, 1950.

Q. Yes, subject to the testimony you have given relative to your objection at that meeting?

A. Yes.

Q. None other?

A. Oh, I made no other objection until later.

Q. And was the next objection you made to the grievance [1312] committee or its formation or functioning was your objection that you made to Dr. Stevens when he talked to you about the Edwards matter on or about September 23, 1950?

A. Yes.

Q. And that was approximately five months after the committee was formed, correct?

A. Yes.

Q. Doctor, I will ask you, do you concede that a professional society such as the medical society has any right, as one of its proper functions, to control or recommend or advise a fair fee schedule

(Testimony of Miles H. Robinson.)

and charges as between the members and the public? A. No.

Q. Dr. Robinson, after your conversation with Dr. Stevens on the 23rd of September, did you not attend a meeting of the local society three days later on September the 26th, 1950? A. Yes.

Q. May I borrow the minute book that you are holding, Doctor, please?

Doctor, I read from the minutes of the meeting of September the 26th, 1950, found in Exhibit 446, at meeting at which it is shown that you were present, is that correct, or do you remember? [1313]

A. I remember that meeting.

The Court: What was that date?

Mr. Kimball: September 26, 1950.

A. Yes, I remember that meeting.

Q. The minutes follow:

“Dr. Smeltzer reported on the meeting of the Washington State Medical Association held in Spokane September 10th. Following this report, discussion was held on the right of a doctor to hold membership in the State Association, etc.”

Dropping to the next paragraph, there is reference to the application for membership of Dr. John Cranor and others. Then at the last paragraph of these minutes is shown the following:

“Discussion was held on the operation of the Grievance Committee by Drs. Robinson, Stevens, Keyes, Carlson, and Tompkins.”

Do you remember the meeting and the discussion that is referred to in the minutes I last read you?

(Testimony of Miles H. Robinson.)

A. I remember some of it.

Q. Did you join in that discussion?

A. Yes, I think so.

Q. Did you initiate it?

A. May I see those minutes? [1314]

Q. Surely.

(Exhibit handed to witness.)

A. I think I did.

Q. Do you remember now how you initiated it?

A. Yes.

Q. Tell the Court, please.

A. I got up on my feet and mentioned my meeting with Dr. Stevens three days before, said I was very much against the idea of the secret committee and said I hoped the society would discontinue it.

Q. Is that all that you said?

A. That is all I remember.

Q. Did Dr. Stevens then get up and present his version of the incident of September the 23rd?

A. Yes.

Q. Was it freely discussed among the membership, and particularly those mentioned in the minutes? A. Yes.

Q. Were you in any way impeded or held back or hampered in your discussion of this subject before the whole society? A. No.

Q. Were you abused or criticized in any way for the view you took at that time?

(Testimony of Miles H. Robinson.)

A. Somewhat. [1315]

Q. By whom? A. Dr. Stevens.

Q. Anyone else? A. No.

Q. Do you mean by Dr. Stevens that he disagreed with you, or that he criticized and abused you? A. Both.

Q. That he criticized and abused you, also?

A. Oh, I don't think he abused me.

The Court: Verbally?

Q. (By Mr. Kimball): I mean verbally I don't mean physically, Doctor.

A. Well, he was quite indignant and very critical. I think that is as far as it went.

Q. Between the two of you, Doctor, between you and Dr. Stevens, were most of the views, pro and con, as to what had happened at the meeting between you and Stevens of September the 23rd brought out at that meeting?

A. Oh, I think they were.

Q. Did you state to the society at that meeting that Dr. Stevens, as chairman of the grievance committee, had accepted a false complaint against you?

A. Did I state that?

Q. Yes.

A. What was that again? [1316]

(The question was read.)

A. I didn't know anything about a complaint beyond what Dr. Stevens had told me.

Q. Well, that is all I mean.

A. I said it was trivial.

(Testimony of Miles H. Robinson.)

Q. You said it was trivial, but you didn't claim it was false? A. I said it was unjustified.

Q. Well, did you criticize the grievance committee for having accepted the complaint, Doctor?

A. Well, I just criticized the committee, period. Said it had no business to do what it did.

Q. Doctor, you have examined the bylaws and constitution of the local society as they were extant at that time, at that date and in April of 1950, and are familiar with them, is that correct?

A. I don't believe I have.

Q. You mean you haven't studied them?

A. I don't think I had paid any attention to the bylaws up until that time.

Q. Well, you have now? A. Oh, yes.

Q. You are fairly conversant with them?

A. Yes, I think so.

Q. Can you cite to me, Doctor, any provision of either the [1317] constitution or bylaws of the Walla Walla Society prohibiting or preventing the formation and use of a grievance committee such as was formed here?

A. Preventing the use of it?

Q. Preventing or prohibiting?

A. The word "grievance"—no.

Q. And the bylaws, they are now the same as they were in 1950, are they not?

A. I think they are.

Q. And the constitution, likewise?

A. I believe so.

(Testimony of Miles H. Robinson.)

Q. Do you concede the power of the local medical society to formulate and use a grievance committee?

Mr. McNichols: Your Honor, I am wondering if we are not getting into conclusions that the witness may be drawing?

Mr. Kimball: That may be right. If it is, I will withdraw the question.

The Court: Yes, I think it is, probably.

Mr. Kimball: I will be happy to withdraw the question.

The Court: Probably getting into the issues of the case.

Mr. Kimball: It may be an ultimate fact that the Court will decide. [1318]

Q. Dr. Robinson, whom did you consider formed the grievance committee of the Walla Walla Society? A. I don't know.

Q. Well, weren't you in attendance on the meeting of April the 25th, 1950, when it was formed?

A. Well, I just don't know what you mean by formed.

Q. Organized?

A. Well, I mean I don't know whether you mean who planned it or who appointed it or—

Q. Well, I used the term "organized," I will change it to "create" if that simplifies the question.

A. Well, it doesn't really—there were so many people, so many organizations, involved. I just don't know what you want to know.

(Testimony of Miles H. Robinson.)

Q. You can't answer my question as to who organized the grievance committee?

Mr. Sembower: Your Honor, I think the question is ambiguous, knowing the views of the witness as he has testified. He has testified that this committee was formulated pursuant to the AMA, to perhaps the Washington State Medical Association, and then by Dr. Page, and then also in the meeting itself pursuant to motion and then by the trustees. It is a hard thing, too, for him to answer a question as to who created it.

The Court: Will you read the question? [1319]

(The question was read.)

The Court: Well, I will sustain the objection unless you make it more specific.

Mr. Kimball: All right, I will approach it another way. I will withdraw the question, if I may.

Q. And I ask you, Doctor, if in your deposition at Walla Walla, when discussing this subject, the question was asked of you by Mr. Tuttle or myself:

“Q. Is that the only way Dr. Stevens was acting as an agent of the AMA in this conspiracy?”

“A. Oh, no, he was one of the moving factors all through this thing, as you will find in the complaint.

“Q. How was he acting as an agent of the AMA in this conspiracy?”

“A. Well, first, he was a member of the AMA; second, he was the organizer and the chairman of

(Testimony of Miles H. Robinson.)

this AMA-sponsored grievance committee exercising police power," and so on.

Did you make these answers to the questions that I have just read you? A. Yes.

Q. Well, then, what did you mean when you told me you [1320] couldn't answer my question as to who organized it?

Mr. Sembower: Well, your Honor, I don't think there is any point in counsel saying that. Let him post that question to the witness. That places a different orientation on the word "organize."

The Court: Well, I will sustain the objection to the last question.

Mr. Kimball: Very well.

Q. Dr. Robinson, you have initiated a suit in the Federal Court in Illinois, have you not, against the AMA?

Mr. McNichols: Object to that question, your Honor. I don't think that case in Chicago has any relation to the issues here.

The Court: What is the point of the question?

Mr. Kimball: Maybe the point isn't well taken, your Honor, but I wanted to ask a couple of questions as to the position he is taking in the Chicago lawsuit relative to the local situation.

The Court: Inconsistent with the position, with the case here?

Mr. Kimball: Yes, relative to the formation of the grievance committee.

The Court: Well, all right, I will overrule the objection.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Can you answer the question, please, [1321] Doctor?

A. Could you read that question?

(The question was read.)

A. Yes.

Mr. Kimball: Could I have 466, please, Mr. Clerk?

The Court: I might say that this isn't, in one sense, an independent action back there because the record here, of course, the Court takes judicial notice, as the file shows, that the American Medical Association was at one time a party defendant here and was dismissed out apparently on jurisdictional grounds, so it is simply a renewal of a suit that started here, anyway.

All right, go ahead.

Mr. Kimball: I am not going into it extensively.

The Court: I simply want to point that out, because I don't regard it in the light of the circumstances as an independent, different action, as I think the state court action was.

Q. (By Mr. Kimball): Doctor, I will show you what has been marked as Defendants' Identification 466 in this action and ask you if you will look through it briefly and see if you can identify it?

A. Well, that appears to be the complaint in the Chicago case. [1322]

* * *

Q. (By Mr. Kimball): Doctor, as far as you are familiar with the Chicago suit that we have

(Testimony of Miles H. Robinson.)

talked about, have you taken the position there that the American Medical Association has initiated and caused the organization of the local society's grievance committee?

A. Caused the organization of it?

Q. Yes.

A. Well, as I said before, I think there is—well——

Q. Answer the question, please.

A. I don't see how I can answer that question.

Mr. Kimball: Will you read it back, please? Maybe it wasn't clear. [1324]

(The question was read.)

A. Yes.

The Court: I might state, counsel, frankly that I doubt that this is going to be very helpful, because in view of the nature of Federal Court pleadings, they are obviously drafted usually by the attorneys, they are not required to be verified by the litigant, and, moreover, the Rules of Civil Procedure countenance inconsistent and alternative pleadings. A litigant may take a position one place and say if that doesn't work, I am going to try something alternatively in another case, and it doesn't really mean much, the stand taken in pleadings.

Mr. Kimball: I will be very glad to withdraw the offer as an exhibit and leave it as an identification.

The Court: All right.

Q. (By Mr. Kimball): Now, Dr. Robinson, do

(Testimony of Miles H. Robinson.)

you concede that a complaint was made by Mrs. Noel Edwards to Mr. Fullerton as secretary of the grievance committee of the Walla Walla Society regarding a dollar and a half charge made by you? A. Do I concede that it was made?

Q. Yes. A. No.

Q. I hand you, Doctor, what has been marked and discussed herein as Plaintiff's Exhibit 10 and ask you to look at [1325] it again. A. Yes.

Q. What is that?

A. Well, it purports to be a complaint of Mrs. Noel Edwards.

Q. That is an exhibit of the plaintiff's. Is it No. 110? A. No. 10.

The Court: Yes, it is in evidence.

Q. (By Mr. Kimball): Let me ask you this, Doctor, if that was filed, would you concede that that was a complaint?

Mr. Sembower: I object to that as very speculative, your Honor. I don't think the witness is being captious on the question. One of our fundamental positions is that this complaint was procured and is not a voluntary complaint, and I think that is what is troubling the witness in answering that particular form of question. Physical acts leading to this are the subject of inquiry that is legitimate.

The Court: I am not sure what counsel has in mind. May I see the exhibit?

(Exhibit handed to Court.)

What was the question?

(Testimony of Miles H. Robinson.)

(The question was read.)

The Court: Well, I think I will sustain objection to that.

Q. (By Mr. Kimball): Doctor, I will ask you if it is your [1326] position that Mrs. Edwards never made a complaint to Mr. Fullerton?

A. I don't know whether she did or not.

Q. That's fine. Doctor, did you think that Dr. Stevens was talking about a complaint that had been made to the grievance committee by Mrs. Edwards? A. Well, that is what he said, yes.

Q. Doctor, do you concede that a letter dated September the 30th, which is a letter exhibit in here, was written on behalf of the grievance committee relative to the Edwards complaint, was written to Mr. Noel Edwards with a carbon copy to you? A. No.

Q. That that was not done, is it your position?

A. I don't know whether it was done or not.

Q. You do not concede it? A. That's right.

Mr. McNichols: Just a moment, counsel. If I may say a word, your Honor, to Mr. Kimball. Your question presupposes it was written on behalf of the grievance committee, which I assume purports to mean the grievance committee acting as a unit, and that question is in issue here also and the witness may be confused.

The Court: Well, another thing, I doubt the propriety of asking the witness for concessions unless they are [1327] matters within his personal knowledge.

(Testimony of Miles H. Robinson.)

Mr. Kimball: That is what I was seeking.

The Court: It is a factual examination, really, and not——

Mr. Kimball: I was asking him if he had knowledge from which he could say that was true or not true. I think he has answered the question.

The Court: I thought you asked whether or not he conceded the letter was written.

Mr. Kimball: That was my language. That was the language, but what I was seeking to arrive at was the basis of his knowledge.

The Court: Oh. Well, proceed.

Q. (By Mr. Kimball): Doctor, do you know whether or not Dr. Stevens was even in Walla Walla from the date of September the 30th for a fortnight after that? A. I don't know.

Q. Doctor, you testified the other day, I believe, to the fact that the society was not interested in regulating ethical matters and you referred to the fact that you had on one occasion stated to the society that a certain doctor had surrendered his narcotic license, is that correct? Did you testify to that? A. Well, not in those words.

Q. No, I don't mean to be quoting you, but, in substance, [1328] is that what you testified to?

A. Well, I have used the words that his license had been revoked, which is different from surrendering.

Q. Very well. When was it that you stated these things to the society, if you did?

(Testimony of Miles H. Robinson.)

A. Well, if I could see the minute book of January, '51.

Mr. McNichols: January, '51?

A. 25th, I think it is.

I made that statement in the regular meeting of the society, January 25, '51.

Q. (By Mr. Kimball): Now, Doctor, in your testimony, you didn't refer to the name of that doctor, and I am not asking you to refer to it now, unless you choose to, but at the time you stated this to the society, did you name the doctor by name?

A. No.

Q. Is that doctor living?

A. I believe not.

Q. Where did you get the information on which you made that statement?

A. I was told that by a city detective of the City of Walla Walla.

Q. Was it hearsay, then, as far as you were concerned? A. Well, all I know is he told me.

Q. The doctor didn't tell you, did he? [1329]

A. Not in so many words.

Q. Did you make your complaint in writing to the society or any member of the society?

A. No.

Q. And you didn't name a name? A. No.

Q. Dr. Robinson, I want to ask you a few questions now in the general category of the Brooks complaint, as distinguished from the grievance committee and the Edwards matter.

(Testimony of Miles H. Robinson.)

Doctor, I hand you what has been marked herein as Plaintiff's Exhibit 18. Would you glance through that, please? A. Yes.

Q. Do you know what it is? A. Yes.

Q. What is it?

A. It says here, "Statement of Thomas R. Brooks Made to Members of the Walla Walla Valley Service Corporation."

Q. Will you look at the end of it and see if it bears any signature? A. Yes.

Q. Whose signature is shown?

A. Thomas Richard Brooks.

Q. Is that your former patient of whom you have testified [1330] here? A. Yes.

Q. Do you recognize his signature?

A. Well, I have no reason to really know his signature. I think that is it.

Q. I read to you from page 4 of Exhibit 18 starting at line 5, as follows:

"Well, at ten minutes to eight, on the Sunday morning, my telephone rang and it was Dr. Robinson. This is the conversation. I answered the telephone, 'Hello.' He said, 'This is Dr. Robinson.' I replied, 'This is Mr. Brooks.' He immediately said, 'Well, Mr. Brooks, I have decided if you don't have your daughter give me that letter, I will have to report you and your wife to the medical authorities. If you hand the letter over, I won't do anything.' I replied, 'Doctor, that is a threat.' He replied, 'No, it isn't.' I said, 'It is a threat because you have said to me, Dr. Robinson, if I do A, you won't do

(Testimony of Miles H. Robinson.)

B, but if I don't do A, you will do B. I am awfully surprised at your action. I cannot understand it. I didn't [1331] want to get in this argument and now you have me in over my head because I happen to be one of the unfortunate ones to have something in my blood that you state you should have notified authorities about. Why haven't you notified them before? I am not going to let you have the letter now.'

"He then threatened to tell my son-in-law and daughter. I said, 'If you do, Doctor, you will have me taking a view that you are a cantankerous type and a disgrace to your profession.' He then said he would give me until noon that day, Sunday, to get the letter to him."

Doctor, this statement being a portion of the Document 18, do you believe that the portions I have read constitute a charge or a complaint against a doctor involving ethics or unprofessional conduct?

A. I don't know really—well, no.

Q. Your answer is no? A. That's right.

Q. Now, so you don't misunderstand my question, I am not asking you to concede whether it is true or false, I am saying the charges made in there do you consider a [1332] charge against a doctor involving ethics or unprofessional conduct?

A. May I see that thing you read?

Q. Yes, you may. I started at line 5 and read down to about 29.

A. Just what is your question?

(Testimony of Miles H. Robinson.)

Mr. Kimball: Will you read the [1333] question?

* * *

Q. (By Mr. Kimball): I will put it this way, Doctor: If a man did the things that were alleged to have been done by Mr. Brooks in that statement, do you consider that that man, that doctor, would have been guilty of unethical conduct as defined by the bylaws, the constitution of the local society, or the code of ethics of the AMA adopted by the local society?

A. Well, all I can say is I don't think a man should do what Mr. Brooks is accusing me of doing.

Q. That is good enough for my purposes.

The Court: Court will take a recess now for ten minutes.

(Whereupon, a short recess was taken.)

Mr. Kimball: Mr. Reporter, would you read the last answer, please?

(The answer was read.)

Q. Well, did you consider the accusation that Brooks had made in that document a complaint against you, Doctor?

A. A complaint against me?

Q. A complaint against you.

A. Yes. [1334]

Q. Doctor, I direct your attention to the minutes of the November 9, 1950, meeting of the local so-

(Testimony of Miles H. Robinson.)

ciety, being a part of Defendants' Exhibit 447, and ask you, or rather read to you a portion thereof:

“Attorney Kimball read to the Board a complaint made by Thomas R. Brooks. After an extensive and complete discussion of the causes that led to the filing of the complaint, the following motion was made by Dr. Tompkins and seconded by Dr. Ralston:

“That an official hearing be held by the Board of Trustees of the Society on the complaint of Mr. Brooks; that Dr. Robinson be served with a copy of the complaint, notified that the hearing is to be held, and requested to be present to present his answer; that the meeting be held in the office of Dr. Ralston, November 21, 1950, at 8 p.m.’

“The motion, after being duly read by the Secretary, was put to a vote and carried unanimously.”

Doctor, assuming that the complaint, or however you depict it, that Mr. Brooks signed was made, and I am not asking you again to admit the truth or falsity of [1335] it, and was in the hands of the trustees of your society, did you think that it constituted such a charge of wrongdoing by you as would justify the board of trustees in investigating it? A. Yes.

Q. Doctor, do you know of any of the defendants in this lawsuit who induced Mr. Brooks to make this complaint?

A. Do I think that some of them did induce it?

Q. I asked you if you knew——

The Court: No, no, I think what you are asking

(Testimony of Miles H. Robinson.)

is if he has any knowledge that any of them did. He hasn't testified to that, I assume he wouldn't have.

A. Well, I have——

The Court: Do you understand the question, Doctor?

A. I think I do.

The Court: All right.

A. I have no direct knowledge that they induced him to make the complaint.

Q. (By Mr. Kimball): Dr. Robinson, I hand you what has been marked as Plaintiff's Exhibit 39 herein. A. Yes?

Q. Would you please read that aloud? [1336]

* * *

Q. What was the date of that that you read?

A. November 10, 1950.

Q. Did you receive a copy of that, if not the original, of that letter? [1337]

A. I received the original, I believe.

Q. About when?

A. I don't—well, November 10th or 11th, one or the other.

Q. November 10th or the 11th, 1950. Would that have been ten days prior to the scheduled meeting of November 21st? A. Yes.

Q. Did you consider that this letter which you have just read, Exhibit 39 or whatever it is, gave you notice of the purpose of the meeting?

A. Well, I would say so.

(Testimony of Miles H. Robinson.)

Q. Would you say that it notified you of an opportunity to be present and present your defense or explanation that you had in connection with the matter? A. Well, yes.

Q. Was a copy of the Brooks statement, signed by Mr. Tom Brooks, handed to you at the same time as this notice or letter?

A. Well, that does refresh my memory. I believe this was brought around to me personally with such a complaint along with it and was not sent in the mail.

Q. And that is the same as this document as was marked here as Exhibit—

Mr. McNichols: Are you looking for the Brooks statement?

Mr. Kimball: Yes.

Q. As Exhibit No. 18 herein? A. Yes.

Q. And did the copy you received bear the signature of Mr. Brooks? A. I think so.

Q. What practical or expedient method occurred to you at the time or occurs to you now that could have been adopted by the board of trustees to conciliate or settle the charge of wrong-doing in the Brooks complaint?

A. You mean what could they have done that they did not do?

Q. No, that isn't exactly what I mean, Doctor. My question is directed to a provision of the bylaws, which says in part:

“If the accused person is a member of this Society, the Board shall investigate concerning the

(Testimony of Miles H. Robinson.)

matter alleged and shall use kindly efforts in the interest of peace, conciliation, or reformation, as far as possible and expedient.”

The Court: What section is that?

Mr. Kimball: That, your Honor, is——

The Court: It has been referred to before, I remember. [1339]

Mr. Kimball: Yes, it has. It is in Section 2 of Chapter II of the bylaws of the local society.

The Court: All right.

The Witness: And your question?

Q. (By Mr. Kimball): I will try to rephrase it.

Can you suggest now, or did you know then, of any practical or expedient method that the trustees could have used to “use kindly efforts in the interest of peace, conciliation or reformation” concerning the charge or claim of wrong-doing related by the Brooks complaint?

A. Well, if I understand your question, the bylaws call for them to have, as I interpret them, a conference, for the trustees to have a conference with me about the matter prior to any hearing.

Q. Did the meeting of November the 21st, referred to in the notice to you, occur as scheduled?

A. Yes.

Q. Did the transcript of that meeting, and which has been marked here as various number, but I believe 242, depict the parties present correctly?

A. The parties present?

Q. Yes. A. Well, substantially so, I think.

Q. Well, was there any deviation? [1340]

(Testimony of Miles H. Robinson.)

A. Well, yes.

Q. Well, who wasn't there that is shown to have been there and who was there who was shown not to have been there?

A. Well, Mr. Fullerton was there, I mean if you want me to try to be precise. He was there in an adjoining room and that is not shown here. Oh, I beg your pardon. This is the wrong one, it is that other one.

Mr. McNichols: For the record, you are referring now, Dr. Robinson, to Plaintiff's Exhibit 242.

A. And Mr. Fullerton is not shown as being present at this hearing November 21, 1950.

Q. Well, was he there during the hearing?

A. Well, he was there when I came and Dr. Tompkins told me later that he was there throughout the hearing.

Q. You didn't see him there, Doctor?

A. I saw him when I came.

Q. Yes. With that exception, it is otherwise a correct statement of who was there?

A. I think so.

Q. How long did the meeting last, if you recall, Doctor? A. Nearly four hours.

Q. At the meeting, were you given an opportunity to be heard on your phase of the case?

A. No.

Q. Your answer is no? [1341]

A. That's right.

Q. Did you say anything?

(Testimony of Miles H. Robinson.)

A. Oh, yes. I interpret your question to mean adequately heard.

Q. Well, that wasn't what I had asked, Doctor, but I will ask that later. Were you permitted to be heard, was my question?

A. I was allowed to speak.

Q. Did you speak freely?

A. I would say no.

Q. What do you mean by no?

A. Well, I was constantly interrupted and I was forbidden to discuss adequately the nature of the man's condition or to quote from any books on the subject.

Q. Were you given an opportunity to admit or deny the charges that Brooks was making against you? A. Yes.

Q. Who conducted the meeting?

A. Dr. Page.

Q. Did Brooks at that meeting and in your presence repeat substantially the same charge he made in the written document we have just been referring to? A. Yes.

Q. May I borrow the instrument, please, you are holding?

During the hearing, did Miss Curts, the court reporter in attendance, appear to be taking notes on the statements of the people there that spoke?

A. Part of the time.

Q. I ask you, Dr. Robinson, if at that meeting on November the 21st, Dr. Page asked you the fol-

(Testimony of Miles H. Robinson.)

Following question or made the following statement—

Mr. McNichols: Mr. Kimball, would you give me the page number?

Mr. Kimball: 35, Mr. McNichols.

(Reading:)

“Dr. Page: At a prior time in his complaint she states that you have a copy of that letter and that you had indicated if he did not get this letter for you, that you would turn this whole idea of reporting to members of his family that he had syphilis, and if he did get it, you would not.

“Dr. Robinson: It is a little hard to remember what you might say when angry, but I recall something about taking back into the happy family.”

Do you remember that question and that answer?

A. I think that is wholly garbled. [1343]

Q. Do you remember anything substantially like that being said and answered by you?

A. I would say no.

Q. Do you have the corrections that you have said you made handy?

A. Yes, they are here.

Mr. Rosling: 83-A, 4-9-51.

Q. (By Mr. Kimball): I hand you 83-A, which I believe you said included your corrections. Will you show me the corrections you made relative to that statement?

A. One correction here that was made, line 20, it says in the transcript, “that you would turn this

(Testimony of Miles H. Robinson.)

whole idea or reporting to members," and I thought it should have said there, "should give up this whole idea or reporting to members."

The Court: Well, listen, he wasn't asking you to detail, as I understand it——

A. Oh.

The Court: ——your corrections; he is asking you to point out in your corrections any correction of this particular matter to which he has just directed your attention.

A. You mean as I now recall that it should have been?

The Court: No. Can you direct him to what you want here, Mr. Kimball?

Q. (By Mr. Kimball): I was referring to the corrections that [1344] you made at this earlier date, and I will ask you specifically to look at your notes and tell me what you indicated in your correction list was wrong between lines 17 and 27 which I read to you?

The Court: You have just testified that it was a garbled account, you didn't make that answer. Now he asks you to point out in that where you made your corrections, if you did, of that particular answer.

Isn't that right?

Mr. Kimball: Yes, your Honor.

A. The first correction that I made was line 17.

Q. Read it as it is printed and then read how you corrected it, please.

A. Oh, I will try to do that.

(Testimony of Miles H. Robinson.)

Q. Please don't write on the exhibit.

A. (Reading:)

“At a prior time in his complaint he states that you have a copy of that letter and that you had indicated if he did not get this letter for you that you would turn this whole idea of reporting to members of his family that he had syphillis and if he did get it you would not.

“Dr. Robinson:—

Q. Just a moment. That is corrected, that is the way you [1345] would have corrected it if you did correct it?

A. Well, now, I would have to explain that answer, Mr. Kimball.

These corrections here were merely a preliminary effort to make something out of this transcript and I so stated in the covering letter that enclosed these corrections to Dr. Rownd.

Q. Yes, Doctor, I understand that, and these suggested changes were made by you soon after the transcript came into your hands in 1950, were they not?

A. Well, I have worked on it off and on several times and this is the first effort.

Q. Another question, please, Doctor—

The Court: I didn't get yet what his answer was. Of course, I haven't the benefit of looking at the things you are looking at. It means absolutely nothing to me so far. I assume that is the purpose is to give me some intelligence.

(Testimony of Miles H. Robinson.)

Mr. Kimball: It certainly is, and I will get the second copy here so we can work on that.

Your Honor, I can ask him what changes he made in the various lines, and if the Court examines the document——

The Court: Do your lines there refer to lines in the margin? [1346]

A. Yes, they do.

The Court: Let's see, this is line 24——

A. Page 35, and there is no correction line 24.

The Court: Line 24, I see. Well, that is the answer, isn't it?

Mr. Kimball: Yes.

Mr. McNichols: Might I say a word, your Honor? If you ask him first if there are any corrections indicated.

Mr. Kimball: That is a very good suggestion, I will do that.

Q. Doctor, I am referring——

The Court: I thought that was the question all the time, whether there was any correction on that particular answer, and if there isn't any, isn't that the answer?

Mr. Kimball: I think he indicated there were some small word corrections, didn't you?

A. Yes.

The Court: I see, all right. There seems to be a word omitted there in the answer just looking at it.

Q. (By Mr. Kimball): Doctor, I will go down

(Testimony of Miles H. Robinson.)

to line 24 on Page 35, which I will read. Lines 24, 25 and 26, they purport to be your answer:

“It is a little hard to remember what you might say when angry, but I recall something about taking back into the happy family.” [1347]

Will you state to the Court now what corrections you made on those three lines or any of them, 24, 25 or 26?

A. I stated here on the phrase from the word “taking” to the word “family,” “I don’t know what this was and obviously Miss Curts doesn’t either.”

Q. You said that?

A. I wrote that on this correction sheet.

Q. On your correction sheet, did you make any notation for a correction on line 24? A. No.

Q. And that is the line which reads: “It is a little hard to remember what you might * * *” there is no correction on that? A. No.

Q. And on the next line, “say when angry,” have you made any correction on that?

A. Not in this document.

Q. That is all.

Mr. Kimball: Could I have 107, Tom?

The Clerk: Is that an exhibit?

Mr. Kimball: I think it is.

The Court: It is admitted in evidence.

Q. (By Mr. Kimball): Doctor, I hand you what has been marked Plaintiff’s Exhibit 107 herein, purporting to be [1348] a letter to you from Morton

(Testimony of Miles H. Robinson.)

W. Tompkins, President, Walla Walla Medical Society, and ask you to read it from the date on.

A. Your Honor, would it be proper for him to ask my questions on the letter?

The Court: May I see that?

A. Rather than reading so many documents?

The Court: Well, would you prefer not to read so many of these?

Mr. Kimball: That is all right.

The Court: Do you want to interrogate him about that?

Mr. Kimball: Yes, I will accept that.

The Court: Might save some time.

Mr. Kimball: Yes.

Q. Doctor, I read to this from this Exhibit: May 10, 1951, letterhead of Walla Walla Valley Medical Society:

“Miles H. Robinson, M.D.,

“Drumheller Building,

“City.

“Dear Dr. Robinson:

“In view of the findings and recommendations of the State Grievance Committee of the Washington State Medical Association in the matter of Thomas R. Brooks vs. Miles H. Robinson, M.D., and in conformity [1349] with Paragraph (b), Section 2, Chapter II, of the Bylaws of the Walla Walla Valley Medical Society, you are hereby ordered to appear before the membership of the Society convened in regular business meeting on Tuesday, May

(Testimony of Miles H. Robinson.)

22, 1951, at 8:00 o'clock p.m. in the classroom of St. Mary's Hospital, Walla Walla, Washington.

“Very truly yours,

“MORTON W. TOMPKINS,
“President, Wallace Walla
Valley Medical Society.”

I ask you, Doctor, if you received that letter?

A. Yes.

Q. When?

A. Oh, I think it was on the 10th of May, or the 11th.

Q. Of 1950? A. '51.

Q. '51. Now, Doctor, I hand you Defendants' Exhibit 429, which purports to be the constitution and bylaws of the local society.

Mr. Kimball: Have they been admitted, your Honor, 429?

The Court: Yes.

Q. (By Mr. Kimball): Will you please refer to the portion of that bylaw provision referred to in the letter of [1350] May 10th to you which you have just testified about? A. Yes.

Q. What is the provision of the constitution and bylaws referred to?

Mr. McNichols: What was the provision of the constitution or the bylaws?

Mr. Kimball: Well, whatever is referred to in the letter.

A. It is in the bylaws and it consists of the two

(Testimony of Miles H. Robinson.)

pages dealing with the subject of disciplining members.

Q. You had seen a copy of the constitution and bylaws at that time? A. Yes.

Q. Did you have a copy? A. Yes.

Q. When you received that letter?

A. Yes.

Q. Dr. Robinson, I show you what has been marked as Defendants' Identification No. 427 herein and ask you what it is? A. Yes.

Q. Have you examined it, Doctor?

A. Yes.

Q. What is it?

A. It is a letter from myself to the members of the Walla [1351] Walla Society dated May 16, 1951.

Q. I don't believe you have testified about that previously in your testimony, have you?

A. I don't know. I don't think so.

The Court: I would assume not, it hasn't been admitted in evidence.

Q. (By Mr. Kimball): And it is a letter you wrote? A. Yes.

Q. And addressed to whom?

A. Members of the society.

Mr. Kimball: I ask that it be admitted. Is there any objection?

Mr. Sembower: No objection.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Defendants' Exhibit No. 427.)

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Referring to this date, Doctor, May 16, 1951, that was six days before the meeting of May the 22nd? A. That's right.

Mr. Kimball: I will read this:

“Members of the Walla Walla Valley Medical Society”——

And before I do, Doctor, did you send this letter out? [1352] A. Yes.

Q. Whom did you send it to?

A. People to whom it is addressed.

Q. That is, all the members of the Walla Walla Valley Medical Society? A. That's right.

Mr. Kimball (Reading):

“Dear Doctor:

“In order to mitigate the duration and the boredom of our meeting next Tuesday, May 22, 1951, in which you will be asked to digest 9 pages of documents from the State Grievance Committee, I enclose for your advance perusal a copy of their document which recommends that you suspend me from our Society.

“The deletions refer to Brooks' actual disease, and have been made for security reasons.

“Regarding this false charge that I exposed Brooks' disease to Edwards, which the State Grievance Committee so readily accepted, I will refute this before you in 5 minutes with written evidence from Edwards himself. [1353]

“Sincerely yours,

“M. H. ROBINSON, M.D.”

(Testimony of Miles H. Robinson.)

Q. Was this sent out on or about that date?

A. That's right.

Q. Doctor, in your direct examination, I believe you stated that you did not know the purpose of the meeting on May the 22nd, 1951. Is that still your position? A. Yes.

Q. Is it your position that you didn't know that the Brooks matter would be considered by the society?

A. Oh, I assumed that it would be considered.

Q. I have in mind the notice you had received on the 10th. A. Pardon?

Q. I had in mind the notice that you had received on the 10th stating you were to attend the meeting. You remember the one we just talked about?

A. Yes, I knew it would be considered.

Q. And I have in mind the letter that I just read of May the 16th. It is your position that you didn't know what was going to occur at the meeting and had had no proper notice of it?

A. That's right.

Q. I hand you what has been marked Plaintiff's Exhibit 111 for identification——

Mr. Sembower: Your Honor, that last question, I'm [1354] sorry, but I would like to have it stricken. It is a question of a double aspect. He asked the question: "You say you didn't know what was going to come up; you say you didn't have proper notice?" Now, he may feel he had proper notice, but still not know what was coming up.

(Testimony of Miles H. Robinson.)

The Court: Well, I am frankly a little confused here. I thought he said at one time he did know that the Brooks matter was coming up and said again this last time, he seemed to indicate that he didn't know.

Perhaps you can clear that up, Mr. Kimball.

Mr. Kimball: Very well.

The Court: His answer is not clear to me.

Q. (By Mr. Kimball): Dr. Robinson, in your direct testimony, I understood you to say that you didn't know that the Brooks matter was going to come up at the meeting of May the 22nd, 1951, before the society. Am I correct in my recollection of your testimony?

A. Well, I don't know what I said; I can't recall exactly, but I can tell you that I knew that there would be some discussion of the Brooks matter because it was in those nine pages sent from the state.

Mr. Sembower: I don't know that we ought to speculate on the record or not, but I remember very clearly what he testified and what his position is.

Mr. Kimball: I was asking the [1355] witness——

Mr. Sembower: He knew it was coming up, but he didn't know he was going to be expelled.

The Court: Yes.

Q. (By Mr. Kimball): Doctor, you had received the letter which is marked 107 from Dr. Tompkins to you? A. Yes.

Q. Stating, in part:

(Testimony of Miles H. Robinson.)

“In view of the findings and recommendations of the State Grievance Committee, the matter of Thomas R. Brooks vs. Miles H. Robinson, and in conformity with Paragraph (b), Section 2, Chapter II, of the Bylaws of the Walla Walla Valley Medical Society, you are hereby ordered to appear before the membership of the Society convened in regular business meeting on Tuesday, May 22, 1951, at 8:00 p.m.”

You have that in mind and the letter you wrote on May the 16th; it is your position that you didn't know what was going to happen at the meeting of May the 22nd, 1951? A. That is right.

Mr. Rosling: Mr. Kimball, maybe he feels he didn't know what the result was going to be. You said what was going to happen. [1356]

Q. (By Mr. Kimball): Doctor, did you believe that the charge made by Mr. Brooks against you would be considered by the society that evening, May the 22nd, 1951, in view of the information and notices you had received?

A. You mean, and voted upon according to the bylaws and constitution?

Q. Yes. A. No.

Q. Doctor, I hand you Plaintiff's Exhibit 111—I don't believe it has been admitted—and ask you what it is?

The Clerk: That has not been admitted.

The Court: No. 111 has not been admitted.

A. That is a copy of my remarks to the members of the society at this meeting of May 22, 1951.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Had you prepared those prior to the meeting of May the 22nd, 1951?

A. Yes.

Q. In the form they now are? A. Yes.

Q. Is this what you have referred to in your direct testimony as the nine-minute speech you made or talk?

A. Well, there were two short talks I gave throughout this whole thing. One of them was in Los Angeles at the rehearing and that was the so-called——

The Court: We are talking about this one [1357] here.

Mr. Kimball: We are talking about this particular one.

The Court: Let's confine ourselves to what is before us.

A. Well, I don't know, in answer to your question.

Q. (By Mr. Kimball): You don't know whether this is what you referred to as the nine-minute talk before the society of May the 22nd?

A. No, I don't.

Q. In other words, in any event, you prepared this and you had prepared it prior to the meeting?

A. That's right.

Q. You read it at the meeting?

A. That's right.

Q. Did you make other remarks not included in here?

A. I don't believe—well, I said a few things, yes.

(Testimony of Miles H. Robinson.)

Q. Would you care to state how much time you spent on the floor that night?

A. Oh, not over 20 minutes.

Q. And were your remarks addressed to your defense against Brooks' charges against you?

A. That's right.

Q. And did you also on that occasion distribute to the membership present copies of Edwards' statements that you had taken from the transcript of November the 21st? [1358]

A. I distributed two or three copies of one or two pages of the November 21st transcript.

Q. And you had prepared those and taken them to the meeting ahead of time?

A. That's right.

Mr. Kimball: I offer 111, please, your Honor.

Mr. Sembower: No objection.

The Court: It will be admitted.

(Whereupon, the said statement was admitted in evidence as Plaintiff's Exhibit No. 111.)

Q. (By Mr. Kimball): Dr. Robinson, at the meeting of May the 22nd, 1951, did you raise any objection to the notice at that time that you had received of the meeting? A. No.

Q. Abbreviating my question, do you consider that you received notice of the state grievance committee meeting that was held on April the 22nd?

A. Do I concede?

Q. Did you consider that you received adequate

(Testimony of Miles H. Robinson.)

notice of the April 22nd meeting of the state grievance committee meeting in Walla Walla?

Mr. McNichols: I think probably I will object to that question, your Honor. Ask him if he received a notice and when he received it. I think the witness is again being [1359] put in a position of stating whether the notice is adequate.

Mr. Kimball: I think you are right.

The Court: Yes, I think that is well taken.

Mr. Kimball: I will withdraw the question.

Q. Now, Doctor, going on to another phase, after the hearing of May the 22nd, at which I believe you testified you were expelled, did you in June of that year prepare and file an appeal to the Judicial Council of the American Medical Association?

A. Yes.

Q. I hand you what has been marked as Plaintiff's Exhibit 123 for identification and ask you what it is?

A. That is a letter from myself to the Judicial Council, June 9, 1951.

Q. And that letter was sent by you on or about the date it bears of June 9, 1951?

A. That's right.

Q. And with this letter you sent enclosures which included documents?

A. May I see the letter?

Q. No enclosures went with this letter. Had you previously sent some material to the same addressee?

A. No.

Q. Did you subsequently send material relative

(Testimony of Miles H. Robinson.)

to your appeal? [1360] A. Yes.

Q. Did you send any copy of this notice of appeal, or however you wish to refer to it, did you send any notice of your appeal to the local society indicating you were appealing the action of the local society?

A. Well, what do you mean by notice?

Q. Did you notify any member of the trustees?

A. My recollection is that I told various members of the trustees that I had filed an appeal.

Q. Did you give them any written notice of it?

A. No.

Q. Dr. Robinson, I refer you to the minutes of November the 28th, 1951, of the local society. Have you read them before for that particular date?

A. Yes.

Q. Do they indicate in general to you that the society was then first advised that an appeal was pending and a hearing would be held in Los Angeles four days later on December 2, 1951?

Mr. McNichols: Counsel, are you asking him what the minutes indicate to him?

Mr. Kimball: Well, that is what I asked him. I would like to avoid reading them all, but I can.

I think to shorten this, your Honor, I will take advantage of the Court's suggestion that maybe some of these [1361] exhibits could be read out of court hours, and I would like to list this one for the Court's attention, the meeting of November the 28th, 1951, of the society.

(Testimony of Miles H. Robinson.)

The Court: Let's see, what is that, the meeting of the society?

Mr. Kimball: Yes, 11-28-51. These are all in Exhibit 447.

The Court: And the date of the meeting?

Mr. Kimball: 11-28-1951.

The Court: All right.

Q. (By Mr. Kimball): Doctor, I think you testified you attended the hearing of the Judicial Council held in Los Angeles on December the 2nd, 1951?

A. Right.

Q. What was the first indication that you had of the determination made by the Judicial Council after that hearing?

I will shorten it, was the wire that you received on February the 1st, 1952, and which I believe has been marked as Plaintiff's Exhibit 157 for identification—

A. Yes. [1362]

* * *

Q. Doctor, I hand you what has been marked as Plaintiff's Exhibit 305 and ask you what that is?

A. That is a check made out to me, signed J. A. Edwards, for \$1.50, October either 10th or 11th, I can't tell, [1364] 1950, together with a little note saying, "Please send a receipt to me, care General Delivery, College Place. Thank you, J. A. E.," and an envelope addressed to me, dated October 12, 1950, Walla Walla, Washington.

Q. Was this check received by you?

A. Yes.

(Testimony of Miles H. Robinson.)

Q. Did you consider that tendered in payment of the dollar and a half charge which has been testified to? A. I think so.

Q. Did you ever cash the check? A. No.

Q. For what reason? A. Well——

Mr. Sembower: If he had any.

Q. (By Mr. Kimball): If you had any, naturally?

A. At that point I was just holding on to all the papers in that trouble.

Q. And that is the reason you retained that?

A. Yes.

Q. The note that was attached was attached at the time saying, "Please send a receipt to me, General Delivery, College Place"?

A. That is what it says.

Q. Would that lead you to have any belief as to whether or not they had house delivery or whether they had a box? [1365]

A. Well, I had no reason to doubt——

The Court: What is the date of that, did you say?

Mr. Kimball: October the 10th, 1950.

Mr. McNichols: That is a plaintiff's exhibit, Mr. Kimball.

The Court: It isn't admitted yet.

Mr. Kimball: It is Plaintiff's Identification 305. I offer it.

The Court: It will be admitted. [1366]

* * *

Q. Doctor, I hand you what has been marked

(Testimony of Miles H. Robinson.)

Plaintiff's 223 and ask you if you can tell us what that is?

Mr. Membower: No objection to it.

Q. (By Mr. Kimball): And I will ask you, Doctor, if you received a similar notice of the granting of the rehearing at about the date this bears?

A. Yes. [1369]

* * *

Q. (By Mr. Kimball): I hand you, Doctor, what has been marked Plaintiff's Exhibit 229 and ask you—

Mr. Kimball: Is that admitted?

The Clerk: Yes.

The Court: Yes, it is in evidence.

Q. (By Mr. Kimball): Did you receive this—did you send this document, Dr. Robinson?

A. Yes.

Q. On or about the date it bears.

Doctor, I don't know whether you have any knowledge of this. I show you what has been marked 237, purporting to be a letter, unsigned, addressed to Leroy Carlson. Did you on or about the date of July the 15th get a similar letter from Dr. Lull?

A. Yes.

Q. And was an enclosed opinion with it?

A. Yes.

Mr. Kimball: I offer that, if there is no objection.

Mr. Sembower: No objection. [1370]

* * *

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Now, Doctor, I show you what has been marked Defendants' 499 and ask you to glance quickly at it and see if you know anything about it or a similar document?

A. Well, a similar document was sent to me.

The Court: That is the findings of the Judicial Council?

Mr. Kimball: Pardon?

The Court: Labeled findings of the Judicial Council?

Mr. Kimball: Yes.

Q. You received a similar copy of this instrument at or about the date shown? A. Yes.

Q. And did it arrive in your case also in an envelope showing on the outside Dr. Cunniff's address? A. Yes.

Q. But bearing no signature?

A. That's right.

Mr. Sembower: For the record, to whom is that addressed? [1371]

Mr. Kimball: This particular one is addressed to nobody, as all of them were, but the envelope is to Ralph W. Neill, Executive Secretary of the Washington State Medical Association.

The Court: That is already in evidence, I believe.

Mr. Sembower: Already in evidence, your Honor.

The Court: As another exhibit.

Mr. Rosling: The only distinction is that the earlier one produced in evidence does not have the

(Testimony of Miles H. Robinson.)

letter of transmittal, which has the only date in connection with the transaction.

Mr. Sembower: I don't understand. Was there a letter of transmittal?

The Court: No, he means of the envelope of transmission.

Mr. Rosling: The only date is on the envelope.

The Court: There is no date on the letter itself.

Mr. Sembower: This is the same as the exhibit we introduced except for the envelope. I have no objection to it.

The Court: All right.

The Clerk: It will be admitted?

The Court: Yes, it will be admitted, then, Defendants' 499. I understand the only difference is that this has the envelope. [1372]

Mr. Sembower: Yes, it has the envelope.

(Whereupon, the said findings were admitted in evidence as Defendants' Exhibit No. 499.)

Q. (By Mr. Kimball): Doctor, I will ask you if you attended the hearing of the Judicial Council of the American Medical Association on the rehearing in Chicago? A. No.

Q. Did you know of the rehearing?

A. Yes.

Q. And were you invited to attend?

A. Right.

The Court: Couldn't afford to go, he said. You needn't repeat that, Doctor, for my benefit.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Kimball): Your decision was your own to not go for reasons of your own?

A. That's right. [1373]

* * *

Cross-Examination

By Mr. Rosling:

Q. Dr. Robinson, I refer first to Exhibit No. 41, which is your letter to Dr. Partlow, dated November 13th of 1950. You recall the letter, do you not?

A. Yes.

Q. That letter recites that enclosed therewith is certain material. Do you recall what material was enclosed in that letter?

A. May I see the letter?

Q. It is Exhibit 41.

The Court: What is the number?

The Clerk: 41.

The Court: 41. All right.

A. As I recall, I sent Dr. Partlow all the letters and papers up until that time.

Q. (By Mr. Rosling): Yes. Everything that had been written which related to this transaction down to November 13th of 1950 was enclosed with Exhibit No. 41, is that not correct?

A. Well, I endeavored to send him everything, but I can't guarantee that I did.

Q. And that included, of course, the letter of 9-30-50, Exhibit No. 15?

A. Well, what is that? [1374]

Q. Well, don't you remember the letter of September 30, 1950?

(Testimony of Miles H. Robinson.)

A. September 30th? Yes, I do.

The Court: Fullerton to Edwards, yes.

A. Yes, your Honor.

Q. (By Mr. Rosling): It likewise included the letter from yourself to Dr. Page and the society officers of October 9, 1950, Exhibit No. 16?

A. It probably did.

Q. Your letter to the society members, a three-page letter, dated October 12, 1950, which is Exhibit No. 20?

A. I would think so.

Q. Your letter, a two-page letter, addressed to, "Dear Doctor," dated November 1, 1950, Exhibit No. 31?

A. Yes, I would think it would.

Q. Another letter by yourself to the members of the society, dated November 3, 1950, introduced as Exhibit No. 35?

A. I would think so.

Q. Your formal complaint against the grievance committee, dated November 7, 1950, introduced as Exhibit 37?

A. I think so.

Q. It included a copy of the Edwards complaint?

A. I just really don't know.

Q. And a copy of the Brooks complaint?

A. It may well have. [1375]

Q. In other words, everything that had occurred and had been written at that time relating to this transaction or this controversy was enclosed in your letter to Dr. Partlow, correct?

A. To the best of my recollection, it was my intention to give him everything.

Q. Yes. Now, this letter of Dr. Partlow's, which

(Testimony of Miles H. Robinson.)

is Exhibit No. 41, was sent to others than Dr. Partlow, was it not? A. Yes.

Q. It indicates on the second page that it went to Dr. Reuben A. Benson, Dr. Arthur E. Lein, Dr. J. W. Haviland, Dr. Bruce Zimmerman, Dr. Shelby Jared, Dr. Donald G. Corbett, James H. Berge and V. W. Spickard?

A. My copy does not show the last two parties so I couldn't answer for that. And, if I may say so, in furtherance to the numerous questions you have given me, they can all be answered here with accuracy, I find, by what is on the second page which I had not looked at when you asked me the question, and on the second page it tells exactly what was enclosed in this letter.

Q. Whereabouts on the second page does it indicate that?

A. Underneath my signature in my handwriting.

Q. That is not on my copy. Let me take a look.

Well, these are notations which you made [1376] at a subsequent time, were they not, Dr. Robinson?

A. They were made at the time that I sent the letter. That is my usual custom.

Q. Well, I think that jibes with the various documents that I asked you about, does it not?

A. No.

Q. Well, will you read into the record the letters which were enclosed with Dr. Partlow's letter?

A. Letters of 10-12-50, 10-9-50 to Page, 11-1-50, 11-7-50, 11-11-50, and 9-30-50.

Q. Thank you. Now, how did you happen to

(Testimony of Miles H. Robinson.)

make the selection of the names of the individuals to whom a copy of this letter was sent?

A. I believe those are the officers of the state medical association.

Q. And, as such, they are trustees of the association, are they not? A. I believe they are.

Mr. Sembower: I don't really mean this as an objection, just a clarification. Does he mean now that they are officers or that they were at the time that the letter was written?

A. I mean at the time.

Mr. Rosling: Yes, I assume you are not looking into the future back in 1950. [1377]

Q. On November 22, 1950, you sent another letter addressed to the trustees of the state association, Exhibit No. 48. Do you recall that letter?

A. I would like to see the letter.

The Court: No. 48, Mr. Granger, do you have it there?

I think he has found it, Mr. Rosling found it. Go ahead.

A. Yes, I wrote that letter.

Q. (By Mr. Rosling): Now, that letter also had some enclosures to go along with it, did it not?

A. I will have to see. Yes, it says it had enclosures in it.

Q. Yes. Does your copy of that letter indicate what enclosures were contained?

A. This appears to be one time that it does not.

Q. Well, is it not a fact that that letter enclosed

(Testimony of Miles H. Robinson.)

copies of everything which had transpired down to the date of November 22nd?

A. It may have, I just couldn't tell you. I certainly sent them as much as I could.

Q. Now, I notice that this letter is dated on November 22nd, which is the day following your hearing of the society meeting on November 21st. Was there enclosed in this letter of November 22nd a copy of the Brooks [1378] complaint?

A. I can't tell you. I don't know. I would say it is unlikely because I don't think that many copies were ever made.

Q. Will you look at the first paragraph on the second page, which is a description or a reference to the Brooks complaint. Does that not refresh your recollection? A. Which paragraph?

Q. The first paragraph on the second page.

A. No.

Q. It does not refresh your recollection?

A. Not on that point.

Q. To whom did this letter go?

A. This went to those trustees of the association who were not officers, and so states.

Q. I see. So that between the letter of November 13th and November 22nd, all of the members of the board of trustees of the state association received this volume of material which you have described?

A. Well, yes.

Q. Well, now, Dr. Robinson, if the trustees had read these letters with all of the exhibits, is it not a fact that they would have become disqualified to

(Testimony of Miles H. Robinson.)

sit as an impartial tribunal by reason of having received advance notice of all of the facts relating to the controversy? [1379]

Mr. McNichols: I will object to that question as calling for a conclusion of the witness and as being impossible to answer by this witness.

The Court: Well, I will overrule the objection.

A. I may answer?

The Court: Yes.

A. I would have to ask you to repeat that.

(The question was read.)

A. I don't know.

Q. (By Mr. Rosling): Now, Dr. Robinson, you have testified, according to my recollection, that you did not intend these letters of November 13th and November 22nd to constitute a charge lodged against the grievance committee and society. Am I correct in my recollection of your testimony?

A. I did not consider the distribution of this material as a lodging of a charge.

Q. You did know, however, that the state grievance committee so regarded your letters, did you not?

A. May I see that letter of March 14th? Oh, I think I can answer that. Yes, they evidently considered it to be so.

Q. Reading from Page 389 of your deposition in this proceeding, one question and answer:

“Q. As a matter of fact, did you avail [1388]

(Testimony of Miles H. Robinson.)

yourself of this grievance committee setup in the state association, did you not?

“A. I knew they took it upon themselves in an arrogant and entirely unjustified manner to so regard it.”

Dr. Robinson, why did you feel that the grievance committee was acting in an arrogant and entirely unjustified manner in interpreting those two letters as a lodging of a complaint?

Mr. McNichols: Just a moment, Mr. Rosling. You are assuming that these letters went to the grievance committee, are you not, the state grievance committee? There is no evidence here that it was even established at that time.

Mr. Rosling: I may say to the Court that the letter of March 14, 1951, recites the two letters by date.

The Court: I beg your pardon?

Mr. Rosling: It recites the two letters by date.

The Court: Well, the testimony so far has been with reference to members of the trustees of the association.

Mr. Rosling: Yes, your Honor, but the letter of March 14, 1951, advises Dr. Robinson that the hearings on these two disputes will be held and refers to the two letters of November 13th and November 22nd of 1950.

The Court: Oh, I see. Well, all right. Do [1381] you remember what the question was?

A. I don't, your Honor.

No. 15280

**United States
Court of Appeals**
for the Ninth Circuit

MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

Transcript of Record
In Four Volumes

FILED

Volume III

APR 24 1957

(Pages 865 to 1266) PAUL P. O'BRIEN, CLERK

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Eastern District of Washington,
Southern Division.**



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(Testimony of Miles H. Robinson.)

Mr. Rosling: Well, I will read the question again:

Q. What was there about the letter of March 14, 1951, which led you to the conclusion that they took it upon themselves in an arrogant and entirely unjustified manner——

The Court: There is one missing link here, I think, in this type of cross-interrogation. He hasn't yet said that he so testified. You haven't asked him that, have you? Are you reading from a deposition here?

Mr. Rosling: Yes, I was reading from a deposition. I will go back and do it over again.

Q. (Reading):

“Q. As a matter of fact, you did avail yourself of this grievance committee setup in the state association, did you not?”

“A. I knew they took it upon themselves in an arrogant and entirely unjustified manner to so regard it.”

Did you not so testify? A. I think I did.

Q. Now, will you tell me, Dr. Robinson, what there was about their action which led you to the conclusion that they were acting in an arrogant and entirely unjustified [1382] manner?

A. Well, they were unjustified because their action was totally in violation of all the constitutions and bylaws of all the organizations concerned, and when you act in gross violation of constitutions and bylaws, you are arrogant.

Q. You are stating your opinion, are you not, that it was in violation of the state constitution?

(Testimony of Miles H. Robinson.)

A. You asked my opinion.

Q. Very well. I just wanted to be sure it is an opinion.

When you received that letter of March 14, 1951, which is Exhibit No. 67, you answered it on April 9, 1951, our Exhibit No. 83. Do you recall the contents of Exhibit 83, 4-9-51?

A. I would like to see it.

The Court: 83 is admitted, yes.

The Clerk: 83-A.

Q. (By Mr. Rosling): I hand you Exhibit 83-A.

A. Yes?

Q. Do you recall it? A. Yes.

Q. And in that letter, did you not express your satisfaction of the grievance committee in accepting these letters as the lodging of a complaint?

A. No. [1383]

Q. On two occasions on the first page, and I believe it is in the first paragraph, did you not say that, "I am very glad that the state is taking an interest"? A. I will read you what I said.

Q. Very well, you read it.

A. (Reading): "I am glad that the state society is taking an interest."

Q. And down a half a dozen lines, you repeat that sentence, "I am glad," the second time?

A. Well, the next "glad" is: "I am glad, even though it is my belief that the officials of our local county society simply committed one more action in violation of our constitution when, as I gather

(Testimony of Miles H. Robinson.)

from your letter, they referred the dispute to the State Grievance Committee.”

Q. Now, attached to this letter is a statement which is dated December 29th, but in the context of your letter you refer to it as a summary for use in court? A. Yes.

Q. I wish to read a paragraph or so from that on the first page toward the bottom:

“After this, I repeatedly warned Mr. Brooks and Mr. Edwards that because of this unjust attack upon me, which the Edwards had instituted, I would have to drop the Brooks as patients, inform other responsible [1384] members of the family of the syphilitic condition, and turn them over to the public health department.”

Do you recall writing that? A. Yes.

Q. (Reading continued):

“To both Mr. Brooks and to Mr. Edwards I suggested that they come to see me and bring the Grievance Committee’s letter with them so we could work out a better solution. It was perfectly obvious that unless they changed their attitude, a workable doctor-patient relationship would be impossible and I would lose the trade of seven people in three related families, all of whom I had treated in the past and which had brought me a total income to date of \$182.50.”

Do you recall that? A. Yes.

Q. One more paragraph I would like to read——

Mr. Sembower: Your Honor, I don’t see any reason to emphasize these matters in argument like this, because if counsel wishes to ask him what he

(Testimony of Miles H. Robinson.)

meant or something, there is no denial that this was all written. [1385]

Mr. Rosling: Well, if your Honor please, just a short while ago, within the last day or two, Dr. Robinson specifically stated that he made no statement that he would inform other responsible members of the family. I put it in for that purpose.

Mr. Sembower: That is a conclusion, but I think it is argument, is it not, coming in that way at this time? If he wishes to point out an inconsistency, I have no objection.

The Court: Proceed. I think you can call it to his attention.

Mr. Rosling: One more paragraph:

“A second complaint was then made by Mr. Brooks against me and delivered to members of our society in a manner which I will later describe. In this complaint, Mr. Brooks kept silent about everything I said over the phone relating to my request that they come up to see me and why I would otherwise have to give up their cases. For reasons of his own, he alleged that I simply threatened to expose him and his wife unless he delivered the letter from the Grievance Committee. This is completely false. I was interested in their bringing [1386] me the letter because any discussion we would have would revolve around this letter. It was the concrete evidence of their dissatisfaction with me as their doctor. Furthermore, they could damage me by showing it to their friends and acquaintances. If they were not sufficiently grateful to me for my past

(Testimony of Miles H. Robinson.)

services to bring the injurious letter to me, there would certainly be no hope of an amicable settlement and no object in their coming to see me. I had no intention of rendering medical service to them at prices which they could control by making complaints to an unconstitutionally acting Grievance Committee composed of my medical competitors.”

Do you recall writing that sentence?

A. Oh, yes.

Q. Now, this was composed approximately December 29th of 1950? A. That’s right.

Q. That is only a matter of what, two months after the happening of these events?

A. Yes. [1387]

Q. Why, Dr. Robinson, in writing this summary of the situation for use in court wasn’t there any reference made of any kind to the syphilitic condition of Mr. Brooks and the fact that within two years prior thereto there had been a negative Wasserman recently reported?

A. Well, you have two questions there. You first ask me why I didn’t mention syphilis. I was quite chary of mentioning the word “syphilis” in a letter which would be distributed around.

Now, your other question was something about a negative Wasserman previously. Well, that has to do purely with a fairly complicated medical opinion as to the man’s present condition. I simply didn’t go into that, just as I didn’t mention a number of things in that letter. [1388]

WALTER H. ROBINSON

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Walter H. Robinson.

Q. And where do you reside, Mr. Robinson?

A. 6712 East Schlarret Avenue, Vancouver, Washington.

Q. You are an attorney? A. Yes.

Q. Are you a member of the bar of [1389] Pennsylvania? A. I am.

Q. And a member of the Washington bar?

A. Yes, sir.

Q. Mr. Robinson, what is your relationship with Miles H. Robinson, the plaintiff in this case?

A. I am an older brother.

Q. In May of 1951, did you know about any troubles in Walla Walla?

A. I knew a little about it. He had written me a few letters and I think we may have had a phone conversation, and I had a very limited acquaintance with the situation, just some general somewhat vague knowledge of the situation.

Q. Had you written your father in Pennsylvania anything about what little you did know about this situation, as you testified?

A. I never wrote my father about this until after receiving a phone call from my father. Prior to that

(Testimony of Walter H. Robinson.)

time, I never wrote or in any way discussed with my father this situation, because I felt my brother had talked with me on a somewhat confidential basis about a personal difficulty. My father wasn't very well at the time.

Q. What was the condition of your father's health at this time? [1390]

A. He had had a mild cerebral thrombosis on January 1st of 1951. He was recovering very nicely, able to walk around and do his kind of chores up in the farm up in the mountains, but nevertheless he was, while recovering very well from this light stroke, nothing like his usual rugged self. He was sort of shaky as a result of this illness that he had on January 1st.

Q. Mark Robinson, of Tunkhannock, Pennsylvania, is also a brother of yours, is he not?

A. Yes.

Q. Did you receive a long-distance telephone call from him in June of 1951?

A. I hesitate about the date, but that, I think, is correct, yes, I did.

Q. Where were you at the time you received this call?

A. I was in my office in Vancouver, Washington.

Q. Was your father also on the line during that conversation?

A. Yes, sir. He spoke very briefly at the beginning of it. The connection at the start was poor and almost immediately my brother took over, with my father listening in on the wire, and then my father

(Testimony of Walter H. Robinson.)

discussed the situation later at the end of the conversation.

Q. What was the subject matter of the conversation?

A. My brother, Mark, with my father listening in, called to [1391] say that my father had received a letter from a physician here in Walla Walla, a Dr. Pratt. They read the letter to me over the phone. They said this indicates some kind of rather serious controversy out here and he began to tell me about the contents of the letter and asked me—and I said, “Well, I know something about this.” And they were surprised to learn that. And the rest of the conversation was all about this difficulty here and their concern about it.

Q. I see. I show you, Mr. Robinson, Plaintiff’s Exhibit 114, which is a letter dated May 24, 1951, from Wallace A. Pratt, M.D., to Dr. Lewis N. Robinson at Swarthmore, Pennsylvania, and ask you if that appears to be the letter that was read to you over the telephone that day?

A. Yes, this is the letter.

Q. Thank you. And now from the sound of your father’s voice, not asking you what he said, of course, I am just asking the sound of his voice and your familiarity with the nature of his speech, and so on, and his manner of speech, did you draw any conclusions as to the condition of his health and the state of his mind at the time of the call?

A. Well, his mind was clear without any doubt and I knew that from previous correspondence with

(Testimony of Walter H. Robinson.)

him on other subjects. I knew that he was able to take care of his [1392] horse and do other things up on the mountain place there, so his health was not real fragile but it was what you would expect from a man who had recovered from a slight stroke.

Q. Did he seem to be agitated?

A. He was very agitated, very anxious, and deeply upset.

Q. How long about did the conversation take, if you recall?

A. At least fifteen minutes and probably twenty.

Q. Then after the conversation, Mr. Robinson, what did you do, if anything, with reference to this general matter?

A. I made up my mind to come to Walla Walla to try to find out what this seemed to be about. I knew very, very little about it, a certain few contacts with my brother and some letters, mostly letters. My father asked me to look into this and see what it was about.

I, as a lawyer, had represented my father from the time I was admitted to the bar in 1935 until I went in the Navy in 1942 or '3 and again after I got out of the Navy for a little while. We were very close and he asked me to look into this and find out, if I could, what it was about. I think he had heard something from my brother, Miles, but I was interested in hearing if there was another side to the difficulty and what it was about.

Q. And what steps did you take then to inquire into it?

(Testimony of Walter H. Robinson.)

A. So within a few days at the most, I think, I drove my car [1393] to Walla Walla. It must have been about 11:00 o'clock in the morning—no, I may have arrived the night before, I am not sure. But I chatted with my brother a little about this. I had a very small collection for our office to make here, along about 11:00 in the morning I said I was going out and make the collection. Not in this town, but near here, and I used that, frankly, as an excuse to get in touch with Dr. Pratt. Dr. Pratt did not expect me to come. Probably, he didn't even know I existed. I went to him——

Q. By the way, I was going to ask you, was Dr. Pratt a close friend of the family's, to your knowledge?

A. I don't see how he could have been. My father had visited my brother here once or twice, but very briefly, and he certainly wasn't a close friend, no. He might possibly have met my father, I don't know.

Q. Well, then, go right ahead. You got in touch with Dr. Pratt?

A. I called him on the phone and said who I was. I told him I was a lawyer, I said I was Miles' brother, that I was concerned about this situation, my father was concerned, and could I chat with him, could I talk with him and find out what this was about.

He said sure. I think I suggested lunch and he said he was busy, to come up to the office after lunch. [1394]

(Testimony of Walter H. Robinson.)

So at 1:00 o'clock I came to his office. I said I wanted to know what this was about and would appreciate it very much if he could give me his point of view.

The Court: When was that?

Mr. Sembower: That was about——

Q. When was that, if you recall?

A. The time of day, sir?

The Court: Oh, I mean approximately the date?

Q. (By Mr. Sembower): Approximately the day?

A. Our office keeps records of long-distance phone calls, and this phone call from my father was on May 29, 1951. I made the trip a few days, perhaps a week, after that time. So it must have been roughly about June 5th or 6th. I wish I could be more exact. It was within a relatively short time.

The Court: That is sufficient for my purposes. I wanted to relate it to other events here.

Q. (By Mr. Sembower): Dr. Pratt in his deposition also doesn't remember the exact date, but about this same time.

All right, Mr. Robinson, I believe that office was in the Drumheller Building, was it not?

A. Yes, sir.

Q. It was next door, as a matter of fact, to Dr. Robinson's office, wasn't it? [1395]

A. Yes, I think I had never seen my brother's office before. I didn't enter it at this time, but was curious and I could see his name on the door down the hall, but I did not enter his office.

(Testimony of Walter H. Robinson.)

Q. Yes. Well, now, then, as nearly as you recall, what did Dr. Pratt say to you and what did you say to him?

A. Well, after some preliminary in which I said who I was and that I was asking for help; that my father had gotten in touch with me; that there seemed to be some difficulty out here; that Miles' family were very naturally interested in him and interested in his welfare, and my father's impression from this letter was that something rather serious was going on out here, so I asked him for his view of what the situation was and indicated that I wanted it for personal reasons, for family reasons, and did not want to make the basis of what I would learn from him the foundation for any legal proceedings or anything of that kind; that we just wanted to know if there was a medical problem or a health problem or anything of that kind, or a legal problem, what it was about; that I was not counsel for Miles and was sure I never would be, but from a family point of view, we wanted to know.

And with some, I think, restraint and reserve, Dr. Pratt told me in a way that I thought was a friendly [1396] and kindly way his views. He said that there had been a controversy here with relation to the medical service setup. I think he told me that there had been some controversy with respect to a particular patient who had objected, I think, to a dollar and a half bill.

That the medical people here had some views

(Testimony of Walter H. Robinson.)

about this and had, I think, expressed them. I think there was some response to this complaint, perhaps a letter or something, and he indicated that Miles had reacted in a way they thought—well, he had shown resentment and he reacted in a way that they didn't like, that the medical profession didn't like, and——

Q. Did he mention the grievance committee?

A. Yes, he did and said that a complaint had been filed before the grievance committee, that it had processed it, had, I think, written some kind of a letter indicating that, oh, something about the dollar and a half bill maybe wasn't a proper bill, that it should all be overlooked.

Q. And did he say anything about Miles' mental health?

A. Well, yes; wanted to know—I wanted to know what is this about, how this come about, and again with some restraint and reserve Dr. Pratt indicated he felt that Miles was suffering from I think he called it, a persecution complex, something of that kind. And we [1397] discussed this some and I wanted to know more about it and what possibly could be done about it.

Q. If you recall, did he use the term "persecution complex" as a layman might or in a medical sense? What impression did you get of that?

A. I think he is an able doctor and I think he used it as a medical man would use it, meaning a form of mental illness, is the way I took it.

(Testimony of Walter H. Robinson.)

Q. What did you say to him in response to these remarks, if you recall?

A. Well, I was there with a view to exploring any possibility of conciliation. I didn't appreciate or realize how far the dispute had gone at that time and perhaps conciliation was no longer possible. So in order to——

Q. Did he tell you at that time Miles had already been expelled? Did he tell you that he had already been expelled?

A. I don't think so. I think he said that he was under an order of suspension or that proceedings were under way. I don't recall that he flatly said he had been expelled, but I knew from the conversation that he was either already suspended or that some proceedings were under way.

I'm afraid I didn't answer your earlier question.

Q. Well, go ahead, then. I probably interrupted you. I was [1398] asking you what you had said to him in general, if you recall.

A. That wasn't it. It isn't important. I won't bring it up. That wasn't the next to the last question, whether I missed a——

Q. I don't recall it, either. We might just pass that.

Had you seen your brother, Mr. Robinson, seen much of your brother in the period immediately prior to the conversation you had with Dr. Pratt?

A. No; practically nothing whatever. I was busy in my practice in Vancouver, my brother was busy here. I had been in the Navy and hadn't seen him

(Testimony of Walter H. Robinson.)

all those years and we practically never have been in the same state in the last ten years and I hardly ever see him. I had some letters from him.

Q. Had you seen him occasionally, did you see him during those ten years, however?

A. Oh, yes. I got out of the Navy for Christmas or something like that, home for leave, and I would see him for a couple of days, and saw him in Walla Walla once, I think, and once in Portland before this developed in June of 1951.

Q. On those occasions, had you noticed anything that you regarded as abnormal about Miles?

A. No; all members of the family think that some of the [1399] other members of the family are, you know, we are all different, but no——

Q. Were you inclined to believe what Dr. Pratt told you about his mental condition, and so on?

A. Well, I gave it a good deal of credence. I was impressed by Dr. Pratt. He was an older man and had been apparently a leader of his profession here. He told me about a good many letters and some kind of a campaign and some things that my brother had done here and it worried me, and Dr. Pratt's view was that there was a certain element of mental illness involved, or I think his word was "persecution complex," and he had been here and watched Miles and knew whatever the local situation was, and I had no reason, certainly not at that time, to doubt his word.

Q. Did he have any specific——

A. I was impressed to some degree, yes.

(Testimony of Walter H. Robinson.)

Q. Did he make any suggestions that you recall, things that might be done or you might do?

A. Well, I was looking for a way out of a controversy and hoping for a conciliation and, if there was some medical problem or mental illness or something like that, as Dr. Pratt felt, that then I wanted to—"Well, can we do anything along that line? You are a doctor, tell me, Dr. Pratt." [1400]

Q. Did he make any suggestions?

A. And he said, "Well, this thing is really within the field of psychiatry," and I said, "What can be done along that line?"

"Well," he said, "I don't think much can be done along that line, not just by having your brother seek out private advice or something of that kind. But if anything could be done and if the situation were to develop worse, and so on, why, some form of hospitalization might be necessary."

Well, we didn't go into that very far.

Q. Did he say that anybody in Walla Walla had taken steps to have Miles committed to a mental institution or anything like that?

A. No, no one had taken steps. He raised the possibility as to whether it might become necessary. No, no one had taken steps.

Q. Did you get any other impressions now, Mr. Robinson, from your conversation with Dr. Pratt that you haven't related?

A. Oh, I felt that he was co-operative and he had given me the interview for which I asked, and we left it this way: I said, "Well, I would like to know

(Testimony of Walter H. Robinson.)

what further developments transpire here. I will keep in touch and will you keep in touch with me and let me know what happens here?" [1401]

Q. Did he seem to be exasperated with Miles in any way?

A. Oh, there was an element of exasperation. He spoke as a friend but also, yes, there was an element of exasperation and some talk about the rather large practice Miles had down the hall, and in Dr. Pratt's view it wasn't being handled the way some people thought it ought to be and he was a little exasperated about the practice and about the fact that there was a controversy here and wasn't all at peace.

Q. Did you ask him if there were any other doctors in the community who might be influential in the matter?

A. Yes sir. I wanted to know who were the leaders in the profession in the community here because if what Dr. Pratt had indicated to me about some illness were so or if the thing turned worse that way, then I wanted to know who to get in touch with with the leaders here and moreover, I still was hoping that there would be some form of conciliation and hadn't realized how far the thing had gone at all and I thought, well, if we know who the president of the organization is, we can get in touch with him and find out what his point of view is and maybe everybody can be happy.

So I asked the name, I said, "Who is the president of the organization and who are its officers, perhaps I would have occasion to write or get in

(Testimony of Walter H. Robinson.)

touch with them," [1402] and he gave me the names a little later.

Q. And so far as you know, that was the occasion for his writing you the letter of July 1st, '51?

A. Yes, sir.

Q. Which is Plaintiff's Exhibit 286, in which he states:

"Dear Walter:

"Greatly relieved to have had that talk with you. Regret Miles opened up the item. It must have made the visit unpleasant."

And then he puts here:

"President, Walla Walla Valley Medical Society, Dr. Morton Tompkins.

"President, Medical Service Bureau Dr. Emory King."

That must have been in response to your request?

A. That was in response to my request for the official leaders of the society. I never got in touch with them but I thought that possibly it would be good to know who they were.

Q. What did you do then after the conversation was completed?

A. Well, I was not a volunteer, I didn't want to come into the picture, and I had a duty to my father, so, of course, I reported to him about as I have told it here.

Q. Did you see your brother after you had the conversation, [1403] that is, while you were still in town?

(Testimony of Walter H. Robinson.)

A. Oh, yes. From Dr. Pratt's office I went right back to Miles' residence where I had lunch out there with him.

Q. Did your father appear to be upset about the information which you sent him?

A. Yes, he was. He was very upset when he received the original letter from Dr. Pratt and my report didn't make him any less anxious. I more or less repeated what I had learned from Dr. Pratt, and I am sorry to say it didn't relieve his mind.

Q. Did you or any of the members of your family take any steps about Miles, that is, steps about his mental condition, as you had heard it related and so on?

A. No, certainly not. On the contrary, we relied on him both for medical advice in connection with my father's illness; my father later became more ill and we definitely relied upon him for professional advice and also to some extent in our family business. We have a small family business and we turned to him for advice on that.

Q. I believe you are a co-executor of your father's will, are you not? A. Yes, sir.

Q. And your father added a codicil to that will, I believe? A. That is correct. [1404]

Q. If the members of the family had thought that Miles was in need of psychiatric assistance, would they have acted, do you believe?

A. Yes, indeed, they certainly would.

Q. Did you ever reveal, Mr. Robinson, with whom you had talked in Walla Walla about this matter?

(Testimony of Walter H. Robinson.)

A. No, I never revealed it until about last December of 1955. I was under a lot of pressure to state who the doctor was, but I had the feeling, rightly or wrongly, that I had gone there on a confidential basis for personal and family help and so I refused to say until last November, and at that time the doctor's name was already—through some other means, Miles had found his name or perhaps one of the pretrial depositions it disclosed the name. I don't know how exactly he got the name. Last December he came to me and said, "I want to know more about this Pratt business," and insisted that he know about the letters that had gone back and forth between Dr. Pratt and me. He knew they existed, I think in the pretrial examination or something of that sort. So then I said, "You know the man's name, and so on; what do you want to know else?"

Q. Did you have any further contacts with Dr. Pratt by mail or personal visits or telephone that you recall?

A. In December, I gave my brother my file, because, as I [1405] said, he had already obtained on deposition everything that was in it and I kept the file myself, not an office secretary, and yesterday going over a file that I have with my father I found an additional letter from Dr. Pratt which had slipped in my father's file instead of filing it properly in the right file, so there is one additional letter. The others, I understand, are already in evidence.

(Testimony of Walter H. Robinson.)

Mr. Sembower: I ask that this be marked Plaintiff's Exhibit——

The Clerk: 512.

Mr. Sembower: ——512 for identification.

I will say for the record it purports to be a letter from Wallace A. Pratt to Walter H. Robinson, dated July 9, 1952.

Mr. Tuttle: No objection, your Honor.

The Court: It will be admitted, then.

Mr. Sembower: I ask that it be admitted.

(Whereupon the said letter was admitted in evidence as Plaintiff's Exhibit No. 512.)

Mr. Sembower: I will read this letter into the record, Plaintiff's Exhibit 512:

“Dear Walter:

“Thank you for your kind letters and [1406] assurances that you will refrain from telling Miles about me writing your father.

“Yes, the fat is in the fire and the local profession seems to be incensed by having to take time off, as well as to employ counsel.

“I haven't changed my mind as to the unfortunate affliction besetting Miles. He continues to be involved in many other small legal controversies. Win, lose, or draw, this action will engender much hatred and ill feeling in the profession and the community.

“Do hope your father is regaining his health and will not be caused undue concern. May add Miles and the family have practically withdrawn from

(Testimony of Walter H. Robinson.)

social contacts about town and with their close neighbors. I understand he is selling the Russell Creek farm.

“Again thanks and hoping this finds you well and happy.”

Mr. Tuttle: Would you give me the date, please, on that?

Mr. Sembower: July 9, 1952.

Q. Mr. Robinson, after Miles had learned that it was Dr. Pratt who had written his father, did you learn additional things which caused you to modify your earlier [1407] decision not to reveal any of the correspondence?

Mr. Tuttle: If the Court please, I object to that.

The Court: I think the form of the question may be somewhat objectionable. If you are going to have him testify that he came to the conclusion that Dr. Pratt wasn't acting in good faith or something of that sort, but you can bring out what he found out, if anything, additional.

Mr. Sembower: Yes, that is what I would like to ask.

The Court: And the way he found it out, who told him about it, if it is admissible.

Q. (By Mr. Sembower): Did you find out anything subsequent to these visits you have related which indicated to you that Dr. Pratt wasn't acting in good faith?

A. I had for me a serious problem of conscience as to the extent to which I should disclose information received from Dr. Pratt on what I had repre-

(Testimony of Walter H. Robinson.)
sented to him, was a confidential basis when I went to him asking for help, and for it must have been two or three years now I have refused to disclose that. Finally, Dr. Pratt's name came out, but not through me. I was then told that on deposition, Dr. Pratt had——

Mr. Tuttle: If the Court please, that would be hearsay.

The Court: Yes, I think it would be.

Q. (By Mr. Sembower): Well, then, let me read, Mr. Robinson, from Dr. Pratt's deposition dated—well, this is the [1408] deposition taken in this case in response to cross-examination presented by Mr. Rosling. He states:

“A. Well, of course, I only talked with his brother. The brother said that he had had——

“Q. That he?

“A. That Miles had been temperamental or something of that sort and even as a boy he had tantrums and he said that they had to put him in a strait jacket, he was so uncontrollable. I remember that distinctly, his brother telling me that.”

Did you then learn that Dr. Pratt had made such a statement in a deposition?

A. Yes, and the statement that he had been in a strait-jacket was absolutely and utterly false. I never said that, absolutely never said it, and, furthermore, he never had been in a strait jacket or any such thing at all.

And when I realized that I was misquoted in this deposition, I felt that I was entitled to defend my-

(Testimony of Walter H. Robinson.)

self, that I had never said any such thing, and that the privilege, which perhaps in my mind, anyhow, existed for the benefit of Dr. Pratt, was completely gone and destroyed when I was so misquoted. I never said that he was in a strait jacket, it was the furthest thing [1409] possible from the truth that I said it or that he was, and, frankly, it made me angry to be misquoted that way and all the rest of the conversation seemed to be in the deposition anyhow and the privilege, if any, gone, and I felt, well, all right, here is the file and you can read the letters, and so on. And, sure, it was Dr. Pratt, I admitted it last December, 1955, for the first time.

Q. Did you learn, Mr. Robinson, that Dr. Pratt also had written a letter to the American Medical Association about Dr. Robinson, his belief that Dr. Robinson's mental condition was impaired?

A. I was informed that.

* * *

The Court: Did you talk to any other doctors here in Walla Walla about Miles' case?

A. No, sir, on no occasion.

The Court: Did Dr. Pratt suggest that you talk to anybody else?

A. I doubt that, sir. It is four years now, isn't it, or [1410] five? I asked him the names of the leaders of the profession here, and I am sure he did not discourage me from getting in touch with them, he gave me the names.

The Court: I see.

(Testimony of Walter H. Robinson.)

A. But I don't think that he asked me to get in touch with them. I am sure he didn't. He didn't discourage and I am sure—it is hard to remember.

The Court: Yes, all right, that answers my question.

A. If I wanted to, it was all right.

* * *

MILES H. ROBINSON

plaintiff herein, having previously been duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Rosling:

Mr. Rosling: Shall I proceed, your Honor? [1411]

The Court: Yes.

Q. (By Mr. Rosling): Dr. Robinson, I am handing you a few exhibits which I have selected and which I may question you about.

Mr. McNichols: Are those all in evidence, Mr. Rosling?

Q. (By Mr. Rosling): First, Dr. Robinson, I will refer to Exhibit No. 83, which is the letter of April 9, 1951, from yourself addressed to Dr. Rownd, who was the secretary of the state grievance committee. Do you have that letter before you?

A. I have that letter. It is marked 83-A.

Q. Yes, 83-A, I meant to state.

Dr. Robinson, if you will turn to the second page of that letter and to the middle paragraph, the

(Testimony of Miles H. Robinson.)

larger one, there is a statement: "I enclose all material subsequently prepared on the disputes in question."

I notice the word "disputes" in the plural. Do you find the place? A. Yes.

Q. Now, later on in that same paragraph I find this: "In summary presents the essentials, I believe, of my position in the disputes growing out of our secret grievance committee's activities."

That word "disputes" also is in the plural. Do you find it? [1412] A. Yes.

Q. I will ask you, Dr. Robinson, whether the word "disputes" as you used it in that letter indicates both the complaint filed by Brooks against yourself and the complaint of yourself against the state grievance committee—against the county society, pardon me?

A. Probably have to check all the enclosures carefully. I can tell you offhand what I think I referred to.

Q. What did you refer to?

A. Well, let's see, this is April the 9th, 1951, and the disputes that had been taking place were, I would say, three in number. There was a dispute over the grievance committee letter; I mean there was a dispute with the Edwards, apparently; there was a dispute with the Brooks; and there was a dispute with the grievance committee. It seems to me that would cover everything.

The Court: You mean your dispute with the grievance committee?

(Testimony of Miles H. Robinson.)

A. Yes, your Honor.

The Court: I see. All right, go ahead, Mr. Rosling.

Q. (By Mr. Rosling): Now, in that letter, Dr. Robinson, you enclosed a number of corrections with reference to the November 21st transcript. Do you recall that? A. Yes.

Q. And the one which you emphasized a day or so ago was the [1413] phrase, "I jumped the gun," as against, "he jumped the gun"? A. Yes.

Q. I will ask you, Dr. Robinson, are you familiar with Gregg shorthand?

A. To a very limited extent.

Q. Is it not correct that the word "he" is indicated by a character of a small circle?

A. One, or the other of them, is a circle, as I recall. I don't write shorthand.

Q. And the word "I" is also a circle, but a little bit larger circle?

A. It seems to me that they are both some kind of circle, but I couldn't tell you what the difference is.

Q. Well, isn't it quite likely that even a competent stenographer in the rush of taking down evidence could confuse the little circle with the large circle when it came time to transcribe?

A. I wouldn't know anything about that.

Q. Will you again turn to exhibit 83-A, particularly to the last four lines there? A. Yes.

Q. Which reads as follows:

(Testimony of Miles H. Robinson.)

“I am determined, however, to collect for damages rendered and in the future to practice [1414] free from meddlesome interference.

“Trusting that this resume of my position and of my intentions may prove of some use to the association, I am

“Sincerely yours.”

A. Yes.

Q. Dr. Robinson, why did you think that the expression of your determination, your intention to collect for damages, would be of use to the state association grievance committee?

A. Well, my resume I referred to all the rest of the letter and everything that was in the enclosures. I didn't refer simply, or perhaps at all, to any collection for damages.

Mr. Rosling: I'm sorry, would you read the answer?

(Whereupon, the answer was read.)

Q. You did not?

A. Well, I mean as far as being of use to the association goes——

The Court: I don't remember the language now that you quoted, Mr. Rosling.

Mr. Rosling: (Reading):

“I am determined, however, to collect for damages rendered and in the future to practice free from meddlesome interference. [1415]

“Trusting that this resume of my position and of my intentions——”

(Testimony of Miles H. Robinson.)

The Court: Oh, yes, I see.

Mr. Rosling: (Continuing reading):

“——may prove of some use to the association.”

A. Mr. Rosling, in furtherance to your question, the last sentence is a new paragraph, not indicated in your quotation. The first part you read is the end of one paragraph, namely, “I am determined, however, to collect for damages rendered; and in the future to practice free from meddlesome interference.” Then a new paragraph and last paragraph in the entire letter, I say this:

“Trusting that this resume of my position and of my intentions may prove of some use to the association, I am, Sincerely yours.”

Q. Well, one of your intentions was the expressed determination to collect for damages, wasn't it?

A. Yes.

Q. Did you think that the expression of that intention would in any way affect the state grievance committee's opinion in these matters?

A. Well, I said that would prove of some use to the association, and I thought certainly the association would like to know that I considered my predicament so serious that I might have to go to court to extricate [1416] myself.

Q. Dr. Robinson, will you turn to Exhibit No. 41, which is your letter to Dr. Kenneth L. Partlow of November 13, 1950?

A. Yes.

Q. Paragraph four?

A. Yes.

Q. Reading:

“I am equally determined to fight every un-

(Testimony of Miles H. Robinson.)

democratic, unethical, and tyrannical abuse of power exerted by any unscrupulous competitor among my colleagues.”

Did you have any particular competitor in mind when you wrote that sentence?

A. Well, I had one in mind and all in mind, both.

Q. Who is the one that you particularly had in mind?

A. Well, I think I had Dr. Stevens in mind in particular, but I was making a general statement.

Q. Why did you use the word “unscrupulous” with reference to Dr. Stevens?

A. Well, first, he was chairman of an improper committee. I felt that was not scrupulous. I think it is possible I also had in mind that his practice of medicine violated the ethics of the AMA, because he was making money off of medical appliances. [1417]

Q. Isn't it a fact, Dr. Robinson, that you were grinding wheat and selling the product of the flour, the cereal, to your patients?

A. I did grind, I think, as much as thirty five pounds of wheat before we got it in the hands of a retired professor's wife and sold——

Q. And you sold that wheat, that flour, to your patients, did you not?

A. My secretary in the office sold that at cost.

Q. And the proceeds went into your receipts, did they not?

A. I couldn't say where those proceeds went. I

(Testimony of Miles H. Robinson.)

think they amounted to about \$7.00, or something like that.

Q. Altogether, Doctor?

A. I would say so. Not much more than that.

Mr. Rosling: May I have Exhibit No. 304? I think it is one of these right in here.

The Court: Ledger sheets?

A. In furtherance to your question, Mr. Rosling, I now recall that we did get a grocery store, it seems to me, to sell that. They sold a few——

Q. (By Mr. Rosling): I am not interested in sales by the grocery store, I am interested in sales by yourself, Doctor, and my question was confined to that. A. I see.

Q. I will now hand you Exhibit No. 304 and particularly [1418] page 46 thereof and ask whether or not that does not indicate a sale of two pounds of wheat cereal? A. Yes, that does.

Q. What was the charge?

A. Well, let's see, I have never seen this before. This is in the handwriting of my secretary.

The Court: Oh, all that is volunteer information. He asked you a straight-out question.

Mr. Rosling: That is correct.

Q. My question was how much?

A. It shows here a charge of \$5.30 for an office visit, injection, and two pounds of wheat cereal.

Q. And that entry of \$5.30 was on one of your ledger cards? A. Yes.

Q. And if it was paid, it would have gone into your treasury? A. Evidently yes.

(Testimony of Miles H. Robinson.)

Q. Doctor, in your direct examination you referred to a meeting with Dr. Berge in Seattle on April 11th, 1951.

A. In what connection or in what document?

Q. In your direct examination, you told us of the meeting you had with Dr. J. H. Berge in Seattle on April 11, 1951?

A. Yes.

Q. Now, I have before me your deposition taken in this [1419] proceeding, and particularly at page 398, I am going to read approximately one page, and then when I am through, I am going to ask you if this is not your testimony at that time:

“Q. He took that responsibility seriously, didn't he?

“A. Well, he scared me because it sounded to me like Hitler or Mussolini.

“Q. He took that responsibility quite seriously, didn't he?

“A. I have no idea what his—Well, I take that back. I felt he was acting like a dictator and I guess dictators can take things seriously, as well as we people. He was obviously very serious about the statement.

“Q. Was he, in your opinion, sincere?

“A. No, I thought he was quite hypocritical because he was obviously very anxious to have me attend this hearing of his. He did not have the slightest conception of democratic processes or what our various constitutions meant. He acted extremely subservient to Ralph Neill, and I felt he was noth-

(Testimony of Miles H. Robinson.)

ing more than a flunky of Ralph Neill because that was his entire attitude.

“Q. He appeared to you to be friendly to you, did [1420] he not?

“A. Well, the word isn’t friendly.

“Q. Describe his attitude.

“A. Partly solicitous and officious, is another word, and thoroughly disagreeable in the sense that it just didn’t seem an admirable attitude in general that he had.”

A. What was that word, propitious?

Q. Officious. A. Officious.

Q. (Reading continued):

“Q. Did he appear to be friendly to you?

“A. Oh, yes, he acted very friendly, but I thought that he was being very hypocritical.

“Q. You felt his apparent attitude was a pretense?

“A. Oh, definitely, it was quite obvious to me that he wanted to get this big grievance committee meeting and I think pretended to establish his great, new, powerful committee. It was also obvious he was entirely subservient to the new commercialized trend in medicine.

“Q. Was there anything in that interview with Dr. Berge to indicate that he had any animosity or malice toward you? [1421]

“A. Why, yes. I think the man that treats you with hypocritical fashion will always be suspected of malice.”

(Testimony of Miles H. Robinson.)

That is the end of my quotation, Dr. Robinson. Did you testify in that manner?

A. That seems to me familiar, I think, yes.

Q. Now, Dr. Robinson, I would like to have you tell me what it was that Dr. Berge said or in what manner did he act to give you the feeling that, while he appeared to be friendly, he was actually hypocritical and was not friendly?

A. I recollect quite clearly. He was very indifferent to my complaint about the state committee violating our constitution and bylaws.

Q. Did you think he should pre-judge the matter?

A. And he was anxious, unduly anxious, hurried, in his manner about getting me to this grievance committee meeting, and, therefore, I felt that—I felt that he was not sincerely interested in me or in what was right.

Q. When you said that he did not appear to take any interest in your constitutional questions, did you expect him to prejudge the matter prior to the hearing?

A. I don't see the connection between those two things. I can't answer that.

Q. At page 20 of the same deposition, I find this sentence: [1422]

“I don't think there was any organized conspiracy against me at that time, but doctors can be awfully petty when they want to hurt you, especially medical politicians of the kind that hold offices generally all over the country. Your really good doctor hasn't got

(Testimony of Miles H. Robinson.)

time to be a medical politician. It is just the bums, by and large. Well, I won't say any more."

Did you so testify? A. Yes.

Q. You put Dr. Berge in the class of the bums?

A. I am afraid I do.

Q. Do you have before you a copy of Exhibit No. 92, being your letter of April 13, 1951, addressed to Dr. Berge? A. Yes.

Q. The second paragraph, I will read.

The Court: What number is that, please, Mr. Rosling?

Mr. Rosling: Number 92.

The Court: All right.

Q. (By Mr. Rosling, reading):

"Your statement that Mr. Fullerton has been in charge of all the arrangements of this hearing seriously unsettles my confidence in a fairly conducted hearing. If Fullerton and others of [1423] his ilk, being all avid proponents of insurance medicine, which I think ruins our profession, are to have so much influence, I can guess what kind of treatment I will get based on samples to date."

Now, before I question you about that particular sentence, I want to read one paragraph from Exhibit No. 297, which is the state constitution and bylaws, Section 16 of Chapter VIII, Paragraph (b) having to do with the qualifications of members of the state grievance committee. Reading:

"No two members shall come from the same local component society. Each member shall be one of the respected members of his profession who has

(Testimony of Miles H. Robinson.)

demonstrated from time to time his interest in questions of ethical nature. He shall be an outstanding example of sobriety, integrity, and good judgment in matters pertaining to the welfare of the profession, the interests of the public, and the furtherance of proper physician-patient relationship.”

Dr. Robinson, did you know any members, outside of Dr. Berge, of the state grievance committee personally?

A. It seems to me I knew Dr. Yengling, yes. I knew Dr. Yengling and I think he was on the grievance committee. [1424]

Q. Well, did you have any reason to suspect that the personnel of that committee did not fall within the category as I have just read?

Mr. McNichols: I am going to raise one question about this method of examination, your Honor. I think the witness is going to be confused unless he can be shown by Mr. Rosling when the committee was created with respect to these letters and exhibits.

Mr. Rosling: Well, it is already in evidence that the committee was created prior to this time.

Mr. McNichols: When was the committee created?

Mr. Rosling: The “Redhead” went out on the 16th of October. No, I am wrong in my date—February 16th of 1951, was the date that the rules were finally adopted, or, rather, ten days beyond that period of time, which is prior to the date of this letter.

Q. My question, Dr. Robinson, was whether you

(Testimony of Miles H. Robinson.)

had any reason to believe that the members of this state grievance committee did not fall in the category of qualifications which I have just read to you?

A. Yes.

Q. What? A. Yes.

Q. What was it, please?

A. Well, first, my contact with Dr. Berge. [1425]

Q. Which you have just told us about?

A. Yes.

Q. Anything else?

A. Secondly, Mr. Fullerton, my contact with Mr. Fullerton, who was acting as an agent for these men.

Q. So that you felt that because Mr. Fullerton was making the arrangements for this meeting, that you would not receive a fair and impartial hearing?

A. That was one of my reasons.

Q. Let's go down to the next——

The Court: What sort of arrangements was Mr. Fullerton making? Getting a place for them to meet, a reporter, and so on?

A. All arrangements, was what I understood, your Honor.

The Court: Arrangements for a place of meeting and the facilities for their carrying on the meeting, is that generally correct?

A. I wasn't told entirely what arrangements he was making.

The Court: I have in mind the arrangements that you had in mind that made you think you wouldn't get a fair hearing?

(Testimony of Miles H. Robinson.)

A. Well, I felt that he would probably dominate the proceedings.

The Court: Because he got a hall for them to meet in?

A. No, your Honor, because he was the agent for all the activities that had affected me in this controversy up to [1426] now.

The Court: All right, go ahead.

Q. (By Mr. Rosling): Let's go to your second reason, third paragraph:

"I have already attended one long hearing and given what I think will stand as adequate answers clearing me of alleged unethical conduct in the Brooks affair."

Now, that one long meeting, I presume, was the November 21st hearing? A. Yes.

Q. And you felt that your answers contained in that hearing made it unnecessary for you to appear before the state grievance committee? I mean, you were satisfied to let those answers stand for you?

A. Well, in answer to your last question, yes.

Q. Now, the third reason that you didn't want to appear before the state grievance committee's meeting is contained in the fifth paragraph, which I will read:

"I really cannot spare the time from my growing practice for this kind of thing. It also seems——"

The Witness: "Almost seems."

Q. (Reading continued):

"——the more I stand up for my rights, the more popular I become with the public here. [1427]"

(Testimony of Miles H. Robinson.)

Therefore, I will not attend your hearing on April 22nd, 1951.”

The Court: I think the witness had some suggestion about your reading there.

Mr. Rosling: Did I not get it correctly?

A. That's right.

Mr. Rosling: Well, I will read it again.

“I really cannot spare the time from my growing practice for this kind of thing. It almost seems as if the more I stand up for my rights, the more popular I become with the public here. Therefore, I will not attend your hearing on April 22nd, 1951.”

Q. Was that at that time a true statement, Dr. Robinson?

A. Yes. May I say, though, to make sure of my answer——

The Court: Just a moment, just answer the question.

Mr. Rosling: I haven't asked any additional question.

The Court: You have answered the question.

Q. (By Mr. Rosling): If counsel wishes to bring out something else, he may.

I now ask you to turn to Exhibit No. 95, which is a letter from Dr. Berge to Dr. Robinson.

Mr. Rosling: This letter has not been read and I ask permission of the Court to read it at this time.

The Court: All right.

Mr. Rosling: It is dated April 17, 1951: [1428]

“Dear Dr. Robinson:

“I have your letter of April 15, 1951, in which

(Testimony of Miles H. Robinson.)

you state that you must refuse to attend the hearing of the above-entitled cause on April 22nd, 1951. You give as your reason the fact that you 'cannot spare the time from your growing practice for this sort of thing.' You also state that these difficulties originated locally and it is not a question of an appeal from a local judicial body, but that it is a question of 'failure of such a body to follow the due process laid down in the covenant of your constitution.' You state you feel it is a matter for the local law courts, rather than for the grievance committee of the local society.

"I must again call your attention to the rules and regulations of the grievance committee of the Washington State Medical Association, which at the present time are binding upon every member of the association. I would like particularly to call your attention to Article 3, and I quote:

" 'The committee shall have the power and authority to summon members of the association to appear before it, either in connection with complaints involving [1429] the member summoned or as witnesses in cases involving other members. The failure of any member to respond to such summons without reasonable excuse shall constitute grounds for the preferring of charges of unprofessional conduct.'

"We are offering you the opportunity to appear at an impartial hearing and to present your grievances and to answer and cross-examine any witnesses who may be present.

"Your statement that Mr. Fullerton has been in

(Testimony of Miles H. Robinson.)

charge of all the arrangements for this hearing is quite in error. Mr. Fullerton is only handling the mechanics of the meeting in the sense of arranging for a meeting place and the summoning of the various witnesses for the Medical Society. It seems right that he should do this in his capacity as Executive Secretary of the Society. His making such arrangements will have no bearing at all upon the conduct of the hearing.

“Please allow me to urge you to reconsider, and I sincerely hope you will attend the hearing on April 22, 1951.”

You received that letter, did you not, Dr. Robinson? A. Yes. [1430]

Q. And after receiving that letter, did you still feel that you would not get an impartial hearing?

A. Yes.

The Court: Is that number 95?

Mr. Rosling: Correct, sir.

The Court: I will take a recess now.

(Whereupon, a short recess was taken.)

Q. (By Mr. Rosling): Dr. Robinson, after having received Dr. Berge's letter of April 17, 1951, Exhibit No. 95, and having his explanation that Mr. Fullerton was only handling the mechanics of the meeting in the sense of arranging for the meeting place, summoning witnesses, and so on, did you still feel that that factor would prevent you from having a fair, impartial hearing before the state grievance committee?

(Testimony of Miles H. Robinson.)

A. I felt that was one of the factors, yes.

Q. Do you have before you, Dr. Robinson, Exhibit No. 205, a letter dated April 15, 1952?

A. Yes.

Q. That letter is from whom to whom?

A. From Dr. Berge to Dr. Tompkins.

Q. Now, when that letter was introduced in evidence, your counsel read only the last paragraph. I will ask you to read that last paragraph again.

A. (Reading): [1431]

“Be assured of our desire to co-operate to the fullest possible extent in this matter. Do not hesitate to call me or Mrs. Lawrence at the Central Office where all our case files are kept.

“Sincerely,

“JAMES H. BERGE.”

Q. Dr. Robinson, did you construe the co-operation referred to there as co-operation in the furtherance of the conspiracy described in your complaint?

A. At what time, Mr. Rosling? I subpoenaed this letter years later.

Q. Well, let's say right now?

Mr. McNichols: I think counsel is asking for a legal conclusion of the witness again, your Honor.

The Court: Well, I think so. I will sustain the objection to that.

Mr. Rosling: Your Honor please, may I state for the record that in view of the witness' testimony here of several days that events which he related as having transpired in Baltimore were attributable

(Testimony of Miles H. Robinson.)

to this conspiracy, I now wish to withdraw any objections and will waive any irregularity in the taking of the Baltimore depositions and will consent, if counsel wishes to do so, that those depositions may be received in evidence in this trial.

Mr. Kimball: We will join in that. [1432]

Mr. McNichols: What does that have to do with the question you just presented?

Mr. Rosling: What?

Mr. McNichols: Are you referring to the question you put to the witness?

Mr. Rosling: No——

Mr. Sembower: Your Honor, that is a most extraordinary suggestion. What does counsel have in mind? We explained to the Court the circumstances there. As a matter of fact, I, myself, have not read the depositions that came in. We did not retain counsel there to marshal the matter through. It is quite possible that they are not in a perfect form. It was a loss to us to go ahead as we did because we already had the interrogatories in and it was pursuant to the notice and counsel objected to it.

The Court: Let me say this, that all this means simply is that objection has been withdrawn, as I understand it, joined by all of the counsel for defendants.

Mr. Rosling: They don't have to put them in if they don't want to, we are merely expressing our consent that they may.

Mr. Kimball: We understand they have been

(Testimony of Miles H. Robinson.)

mailed to the Clerk of the Court and are in the possession of the Clerk now.

The Court: Objection has been withdrawn. That doesn't [1433] mean that you need produce them. I appreciate the fact that the depositions are taken under many circumstances and are taken partly or wholly for discovery and you need not produce them if you do not see fit to do so, and certainly the Court will not draw any inference or raise any presumption because of your not having done so.

Mr. Sembower: I appreciate that, except I am terribly disappointed because I feel that had counsel not objected before, we might have had probative evidence here, and I think it is certainly with bad grace that it is raised at this time.

Mr. Rosling: Well, may I call to Mr. Sembower's attention that his depositions were on written interrogatories; they were not oral?

Mr. Sembower: They were written and we didn't press the point at that time, now for counsel to take this position for some reason that is completely obscure to me is astonishing.

The Court: I don't see that he has put you in any worse position, Mr. Sembower. Your questions were already formulated and they were written questions, were they not?

Mr. Sembower: That is true.

The Court: You wouldn't have gotten any different kind of answers and, so far as I can see, it simply removes the objection. If you want to put them in, you may; if not, you [1434] need not do so.

(Testimony of Miles H. Robinson.)

Proceed with your examination.

Q. (By Mr. Rosling): Dr. Robinson, I am going to recite the names of the state officers as they existed in 1950, '51 and '52, and I would like to ask you if you were acquainted with any of these men.

We have already referred to Dr. Yengling and Dr. Berge.

Mr. Ralph Neill, the executive secretary?

A. At any particular time?

Q. Is it not correct that you first met Mr. Neill at the time his deposition was taken in this proceeding, or in the preceding state court litigation?

A. I couldn't tell you for sure.

Q. Dr. R. A. Benson?

A. I met him at Los Angeles, December 2nd, 1951.

The Court: Pardon me, I have an afterthought also here. Wouldn't it be true that your depositions would pertain, at least primarily, to a question of damages, rather than liability?

Mr. Sembower: I believe they would. I was thinking about it, too.

The Court: It is something that transpired long after the expulsion here, isn't it?

Mr. Sembower: That is true. [1435]

The Court: It might lend some color to the existence of the conspiracy or the actions taken, but I should think it would primarily pertain to the question of damages, which isn't immediately before the Court, anyway, at this time.

Mr. Sembower: Of course, if the parties that we

(Testimony of Miles H. Robinson.)

charged with being conspirators, to perpetuate their activities so that the Doctor is unable to continue, it might be an overt act.

Well, I have had no chance to really think the thing over, I am really nonplussed somewhat because I haven't reviewed whether all of them were obtained or not, but we will study the situation.

The Court: Yes, all right.

Mr. Sembower: Thank you.

Q. (By Mr. Rosling): Dr. Ross Wright of Tacoma? A. I met him at the same time.

Q. At the Los Angeles hearing? A. Yes.

Q. Dr. Kenneth L. Partlow?

A. I don't think I have ever met him.

Q. Dr. W. E. Rownd of Bremerton, I think?

A. I have never seen him.

Q. Dr. M. Shelby Jared?

A. I met him at the depositions.

Q. In this proceeding? [1436] A. Yes.

Q. Dr. Bruce Zimmerman?

A. Never met him.

Q. Dr. Jim Havolind? A. Never.

Q. Dr. Al G. Young of Wenatchee?

A. No.

Q. Dr. Fred Tucker of Seattle? A. No.

Q. Dr. Vern Spickard of Seattle? A. No.

Q. Dr. Bryant, who was a member of the state grievance committee, and I can't tell you right off-hand what his initials are? A. No.

Q. You did have a telephone conversation with Dr. Bryant, did you not?

(Testimony of Miles H. Robinson.)

A. Yes, he called me, but I never met him.

Q. He called you on April 22nd, 1951, telling you the meeting was about to convene and would you come?

A. As to date, it was about then that he called me.

Q. Dr. C. E. Watts of Seattle? A. No.

Q. Dr. Don Corbett of Spokane?

A. No. [1437]

Q. Dr. I. C. Munger of Vancouver?

A. No.

Q. Dr. Robinson, have you any personal knowledge, knowledge of your own, of any act or thing or any document or communication, whether it is oral or written, which is not already in evidence, which in your opinion shows any participation of the state association in this conspiracy?

Mr. McNichols: I think again, your Honor, I am going to object to that question on the basis it calls for a legal conclusion of the witness on what would or would not constitute a tie-in with the conspiracy.

Mr. Rosling: Just asking for his personal knowledge of any facts within his knowledge while he is on the stand, if there is any such.

The Court: I think counsel's objection is to the word "conspiracy," I suppose which may have different legal connotations than the ordinary meaning of the term. Would you mind reframing your question to say any participation in the Walla Walla difficulties of the plaintiff?

(Testimony of Miles H. Robinson.)

Q. (By Mr. Rosling): Dr. Robinson, I will ask you if you have any personal knowledge of any act or thing or any document or any communication, whether writing or oral, which is not already introduced in evidence in this trial, which relates to the Walla Walla Medical Society difficulty [1438] which is involved in this litigation?

A. I have attempted to put in everything that I knew of or had and I know of nothing else.

Mr. Rosling: I have no further questions of Dr. Robinson, but Mr. Kimball has handed me a note that he has overlooked a couple of documents, and may he offer them, your Honor?

The Court: All right.

Mr. Kimball: I will be very brief, I overlooked them at the time.

Q. (By Mr. Kimball): Dr. Robinson, I hand you what has been marked Defendants' identification No. 409 and ask you if you can identify the document? A. Yes.

Q. State what it is, please?

A. It consists of several documents. The first one is the agreement between the Walla Walla Valley Medical Service Corporation and myself, dated February 1, 1949. The second one is an application form by me for membership in the Walla Walla Bureau, dated, or at least—yes, pardon me, dated February 1, '49; and the third one is an agreement between myself and the Service Corporation with regard to service under the veterans' program dated February 1, '49. [1439]

(Testimony of Miles H. Robinson.)

The Court: What is the number of that? Are those all 409?

Mr. Kimball: They are clipped together as 409, your Honor.

The Court: Oh.

Q. (By Mr. Kimball): Doctor, I will ask you if each of those bears your signature? A. Yes.

Mr. Kimball: I ask that it be admitted.

Mr. McNichols: No objection, your Honor.

The Court: 409 will be admitted, then.

(Whereupon the said documents were admitted in evidence as Defendants' Exhibit No. 409.)

Q. (By Mr. Kimball): Dr. Robinson, I hand you also a group of clipped papers, four in number, which have been identified as Defendants' 410, and ask you if you have seen it and can identify what it is?

A. The first sheet consists of application by me for active membership in the Walla Walla Valley Society and the Washington State Medical Association, dated October 6, 1948. The second sheet is a sheet signed by Dr. Johannesson stating that my credentials are okay and a few other notes. The third one is a letter from Dr. Kennedy of the University of Pennsylvania School of [1440] Medicine to Dr. Johnnesson, dated November 12, 1948. The next document is a carbon copy, apparently, from the chairman of the credentials committee of the Walla Walla Valley Medical Society to the secretary

(Testimony of Miles H. Robinson.)

of the University of Pennsylvania Medical School, dated October 12, 1948; and the last paper here is apparently a letter from the Department of Licenses of the State of Washington to Dr. Johannesson, dated November 4, 1948.

The Court: Are those all under 410, are they?

Mr. Kimball: Yes, your Honor.

The Court: In connection with his application for membership in the society?

Mr. Kimball: Yes. I see no reason for marking them separately unless the Court does.

The Court: Well, that is under number 1, there is no objection to it.

Mr. Kimball: Very well, I will offer them as such, and I would like to read one paragraph.

The Court: Exhibit 410 will be admitted, [1441] then.

* * *

Redirect Examination

By Mr. Sembower:

Q. Dr. Robinson, you were asked about your internship at the University of Pennsylvania Hospital. What kind of an internship did you take at the University of Pennsylvania Hospital? [1442]

* * *

Q. Dr. Robinson, did Dr. Parkhurst invite you at one time to return to the Pennsylvania Hospital?

A. Yes; he did, as an intern.

Q. Some questioning was carried on of you con-

(Testimony of Miles H. Robinson.)

cerning squabbles or controversies that you have had with so-called organized medicine in the past.

Dr. Robinson, do you remember any controversies that you have had in the past with organized medicine, as such? A. No.

Q. In one of the depositions given by Dr. Pratt, reference [1445] was made there to a difficulty which you had had, said Dr. Pratt, in Louisville. Do you know to what he may have referred?

A. I can only think he was referring to Nashville, Tennessee, where I was doing research and teaching for three years or four years during the war.

Q. Did you have any medical contacts at Louisville which could give rise to such a controversy?

A. Never.

Q. Now, as to Nashville, which is your surmise that you think he may have referred to, did you have any controversies there which would give rise, or any incidents there which would give rise to controversies with organized medicine?

A. I have nothing that could possibly be called a controversy in Nashville.

Q. From what illness were you suffering while you were at the Pennsylvania Hospital, Dr. Robinson?

A. Well, I had otitis media, which is infection of the middle ear, with a complicating mastoid infection.

Q. Would that be called a bulging ear drum, perhaps?

(Testimony of Miles H. Robinson.)

A. Yes; it was bulging, that is how it started.

Q. Did you overcome that disability?

A. Well, it was a very slow progress, it really took me, I really didn't get over it until I moved to Walla Walla [1446] in '42 and had my tonsils out.

Q. And then did the difficulty clear up?

The Court: He rested up about a year here, didn't he?

A. Yes; your honor.

The Court: He has testified to that before, I recall very clearly.

Mr. Sembower: All right.

Q. Dr. Robinson, during your cross-examination, you were asked about various depositions which were given, statements that you made on depositions. Were you without counsel during part of the depositions which you gave? A. Yes; I was.

Q. Acting as your own counsel?

A. Yes; for a short time.

Q. You were shown, Dr. Robinson, a letter which is plaintiff's Exhibit 13 written by Dr. Balcom Moore to you dated November 21, 1950, and you were asked if this letter was antagonistic and if there were passages in it which impressed you as being particularly revealing of an antagonistic attitude on his part.

I will ask you to look at this exhibit and to point out various passages in it which you regard as being indicative of Dr. Moore's antagonism toward you.

(Testimony of Miles H. Robinson.)

The Court: What is that number?

Mr. Sembower: I think it is 13. [1447]

The Clerk: 13.

A. 13.

The Court: All right.

A. There is the last four lines on page two which I felt classed me with the Communists here. He says the following:

“The ‘bureaucracy on our necks’ has been hung there not by us nor by doctors, but by the asinine laws passed by the people and legislature of Washington State under the communistic and socialistic leaders they choose to follow.”

The Court: You think that classed you as a Communist?

A. Well, sir, it puts me—he complains about my objection to the bureau and I just felt it reflected on me.

The Court: Wasn't he talking about the people who influenced welfare legislation, the head of the Washington Pension Union, and so on? You don't think he was referring to that?

A. Well, perhaps I should read—

The Court: I am just trying to get your point of view here. That is the end of the first page?

A. End of the first page; yes. Oh, I beg your pardon, it is the end of the second page.

The Court: Oh, the second page; yes.

A. He goes on to say: [1448]

“To the correction of this is where our energies should be directed. The bureau operations are not

(Testimony of Miles H. Robinson.)

bureaucratic in a governmental sense because policies are set, reviewed, and repealed by the entire voting physician membership and not entirely by their elected representatives.”

Then he goes on:

“The only reason our bureau program, not welfare, is better than state medicine is that it is controlled by us.”

And my understanding all along, your Honor, has been that the bureau was set up to fight the communistic and socialistic tendencies in this state, and I was fighting the bureau, so I felt that kind of pushed me into the class of what he calls here the communistic and socialistic leaders that the people and legislators of Washington choose to follow.

Q. (By Mr. Sembower): As a matter of fact, Dr. Robinson, at this time there was a widespread feeling among the doctors that anyone who was associated with a movement for state medicine or anything of that kind was an anathema to the medical profession, is that not correct?

The Court: That is a very leading question, Mr. Sembower. You are not permitted to lead on [1449] redirect.

Mr. Sembower: It is, that is correct.

The Court: I think you'd better let Dr. Robinson testify. He is fully capable of doing it.

Mr. Sembower: All right.

Q. But do you have any comments with respect to the attitude of state medicine and the doctors, their attitude as reflected by this letter?

(Testimony of Miles H. Robinson.)

A. They felt I was not for state medicine, but it seemed to me that the bureau was as bad as any state medicine could be.

Q. I will read to you the last phrase of his letter and ask you for your comment on that along the line of Dr. Moore's attitude in writing the letter. He says:

"I regret that you——"

The Court: Just a moment. Is this still——

Mr. Sembower: The Balcom Moore letter; yes.

(Reading continued):

"I regret that you feel it necessary to break our united front in this effort."

The Court: Oh, I see.

Q. (By Mr. Sembower): To what did you infer that that related?

A. Well, I knew that he meant that the bureau was, in his opinion, the united front against the socialized medicine as planned by Oscar Ewing and other people under the [1450] Truman administration, and I disagreed with him.

Q. Now, let me ask you about a question that was put to you about Mrs. Brooks and the diagnosis which you made of her.

The term was used there several times by counsel questioning you that you had referred to this as a mysterious neurological ailment. When you used the word "mysterious" in what sense were you using that word?

A. Only that it was a relatively obscure ailment.

(Testimony of Miles H. Robinson.)

Q. Is that a common expression in medical parlance?

A. It is a colloquial sort of an expression among doctors.

Q. And does it have any different connotation from the way the word "mysterious" is used in normal language, if you know?

A. I think so. It isn't a good word; "obscure" is the correct word.

Q. And that was the sense in which you were using that word in this connection? A. Oh, yes.

Q. Some question was raised, Dr. Robinson, about why you didn't refer Tom Brooks' case to another doctor. Why didn't you refer Tom Brooks' case to another doctor?

A. Well, that would be no guarantee whatever that either he or his family or the public would have protection [1451] against the disease, and I have never heard of that being done, actually. If a patient's condition is dangerous to himself and associates and the public, one doesn't just go shopping around town to find some doctor that might be able to persuade the man to do what you think he should do. You do your best and then you simply have to turn him over to the proper authorities.

Q. Had you had any indication that if you did refer Tom Brooks to another doctor, that he would go to that doctor?

A. Oh, I had no indication at all. I had frequently suggested that if there was anything about

(Testimony of Miles H. Robinson.)

my treatment of the case, the cases of both he and Mrs. Brooks, that I would be happy to have them go to Portland or Seattle or any other doctor locally. I specifically said any other doctor locally. Now, that was before all this trouble developed, but that is my standard attitude at any time. I frequently volunteer that with any patient just to be sure that they are satisfied.

Q. Also, Dr. Robinson, you were asked if you found syphilis, traces of syphilis, or diagnosed it in Mrs. Brooks and Tom Brooks, though Dr. Campbell had had them as patients. Would that have any application to the matter of your medical approach to these patients, that Dr. Campbell had had them as patients for awhile and had not diagnosed [1452] syphilis?

A. Well, not really, for the reason that Dr. Campbell was a very fine physician, but I was recently out of training and I expected that I would have a few strings to my bow, or whatever you call it, I would have something that he would not have as an older man, long out of medical school.

Q. That is, you were using an approach to syphilis here which was distinctive, is that what you mean to say?

A. Well, I think it really was distinctive in Walla Walla.

Q. In what manner?

A. Well, I think I probably took more Wassermans on patients than any other doctor in town and I had a very thorough training in the disease and I was interested in it and sorry for these people and

(Testimony of Miles H. Robinson.)

went at it, I think, very earnestly and more so than the average doctor around the country.

Q. Mr. Tuttle brought up in his examination of you, Dr. Robinson, the various sub-categories of syphilis and the degrees of its severity, and so on. How is that related to the diagnosis which you made of these patients?

A. The use of the word "category" is not too good there. Syphilis is no different from pneumonia or any other disease, it has stages and it has manifestations which differ with time and with the patient and with the variance of the organism. That is my answer as regards [1453] the use of the word "categories."

Q. What difference might it have made to you had you found that it was, say, a number 2 case or a number 4 case so far as the severity of the disease is concerned in your approach to the diagnosis and treatment?

A. Well, it really wouldn't have made any difference, because the only treatment, I would say 98 per cent of all treatment for syphilis since I came out of school, has become penicillin, and I know that if I myself had a positive Wasserman, I would take a long course of penicillin regardless of what stage of the disease I was in or what symptoms I had of it. I would do that in any case and I have done that for all my patients with one or two exceptions. There is a special condition of faradic shock you can get into with massive doses of penicillin in cardio-vascular syphilis. They are cured so quickly

(Testimony of Miles H. Robinson.)

there is an overwhelming rush of fluid into the affected part which can be fatal, and that is called the Marchheimer reaction, but it is quite rare in syphilis and not a very important thing any more.

Q. This is a small point, but you were asked the question if you had seen Brooks and Edwards at different places and, as I recall, your answer was you stated that you had seen them a great many places.

In making that answer, did you refer to this week [1454] or did you refer to the particular week prior to the conversations you had with Tom Brooks on Sunday and the Monday event following, or did you mean over the general period of time?

A. Well, I referred over the general period of time and had in mind the fact that I saw them in many different houses, and also during that week I had been out to Mrs. Edwards' house. [1455]

* * *

Q. Dr. Robinson, several questions were asked of you as to when you first had the implication, that is, drew the inference from the situation, that you might be in court on this matter. When did it first occur to you that this might be a matter which would get into the civil courts, as distinguished from procedures of the society alone?

A. I think the first idea of it I had of that was when Dr. Page wrote me his letter of November the 10th or 11th and enclosed the Brooks complaint in which Mr. Brooks said that he had thought that he

(Testimony of Miles H. Robinson.)

might have to sue me. [1456] And at that time I also thought that I might have to go to court, because here was a complaint that had been made a month previously and I knew nothing about it and it was dumped on me, so to speak, right after I filed my formal charges against the secret grievance committee in my letter of November the 7th.

Q. To your best recollection, those are the first times that actual court action occurred to you?

A. Yes; they are.

Q. Either as defendant or plaintiff?

A. That's right.

Q. Dr. Robinson, when you received that telephone call from the person who was acting as baby sitter, or whoever it was, for the Edwards child, were you certain that it was candied sulfa that the person told you the child had swallowed?

A. Yes; I am absolutely certain that that is what I was told at the time.

Q. Do you have any basis for your certainty there?

Mr. Tuttle: If the Court please, we have been into these matters before at length.

Mr. Sembower: That was subject to considerable cross-examination and I think he has stated that that was the case, but I wanted to ask him whether he was certain of it or not. [1457]

The Court: Well, he may answer that. Of course, if you go into the conversations regarding the Edwards matter again, then in fairness I must let them do it again on recross.

(Testimony of Miles H. Robinson.)

Mr. Sembower: Indeed, I wasn't asking him to go into that.

The Court: I don't think we should go over them too much. It has been thoroughly explored. I have no objection to your asking about the certainty about it.

Mr. Sembower: I wasn't referring to the conversation, I wanted to ask him——

The Court: Well, it was the conversation with the person who called him, at any rate.

Mr. Sembower: Yes.

The Court: You may answer that, then, Doctor.

A. Well, the only thing I would have to say on that is that when someone calls up and says that a child or anyone else has swallowed a poison, the one and only thing that the doctor thinks of is what was it that was swallowed, because all treatment and all measures from that point on depend strictly on exactly what was swallowed and the treatment is different for all kinds of different things, and that is why I am absolutely certain I was told it was sulfa because my treatment was based on that.

Q. (By Mr. Sembower): Dr. Robinson, did you ever prescribe [1458] a cathartic like epsom salts in connection with a treatment of a child or a person who had swallowed a cathartic? A. No.

Mr. Kimball: If the Court please, I object to that on the ground it is immaterial to any issue before this Court.

The Court: Well, I will let it stand. He has already answered, he said no.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Sembower): Now, the question has come up several times about whether there was a prescription included in the management of this case which you recommended and the use of "RX" as a symbol.

In your use of symbols, what did "RX" indicate?

The Court: He has testified definitely to that, Mr. Sembower, that in his practice he used it either for treatment or for prescription.

Mr. Sembower: Very good.

The Court: I don't know what would be added by having him say it again, do you?

Mr. Sembower: Except that he would testify that he used it habitually as that.

The Court: He testified to that on direct, that is his practice, that is what he did. That is the way I got it, anyway. [1459]

Mr. Sembower: Very good.

Q. Dr. Robinson, when Dr. Stevens accosted you on the street and first referred to the Edwards matter, did you at that time know that he was a member of the grievance committee?

Mr. Tuttle: If the Court please, we went into all those matters on both direct and cross-examination fully on the street conversation.

The Court: Frankly, I don't remember whether he testified to that or not.

Mr. Sembower: I don't think he has testified.

The Court: He testified that Dr. Stevens told him at one stage that he was chairman of the grievance committee.

(Testimony of Miles H. Robinson.)

Mr. Sembower: Yes.

The Court: He may answer that question, whether he knew it when first accosted about it.

A. I learned it when he spoke to me on that occasion.

The Court: You didn't know it before then?

A. No, your Honor.

The Court: All right.

Q. (By Mr. Sembower): Now, as to the matter, Dr. Robinson, of fees and inquiries, you were asked a number of times whether you believed that fees were a legitimate field of inquiry for a grievance committee and you answered usually yes or no to those questions. Now, what was your [1460] belief with respect to whether fees are a field of legitimate inquiry by a grievance committee?

A. Yes; I feel that, well, almost any matter is a legitimate inquiry of a grievance committee, provided what it does is not in conflict with the constitution and bylaws.

Q. In the facts of this particular situation where the matter of fees arose, did you have an objection, however, to the manner in which fees were approached by this grievance committee?

Mr. Kimball: I object to that on the ground that it is a leading question.

The Court: It is what?

Mr. Kimball: A leading question.

The Court: Oh. Well, I will let him answer. I don't think so.

(Testimony of Miles H. Robinson.)

A. Well, my objection in this case was because the inquiry was by a grievance committee which was secret.

The Court: Your question was did he have an objection.

Mr. Sembower: That's right, did you have an objection?

The Court: Yes.

A. Yes.

Q. (By Mr. Sembower): Now, Dr. Robinson, you were asked about [1461] your statement in one of the letters that you wrote about finding no fault with the Walla Walla Valley Medical Society, and what was your position with respect to that?

A. My position, I had objected to the secret committee and the state medical association took that and turned it into an objection against the local society, which was never my position at all.

Q. Mr. Rosling asked you about what he described as your letter to the court, which was an enclosure in one of your mailings to the trustees, I believe, of the state association. What was your letter to the court, so-called?

A. Well, that was a paper I got up to give my legal counsel just to summarize roughly my views, and I never called it a letter to the court, it was called that by Mr. Rosling or by the state medical association.

I think the thing started out something like this: "The situation that I wish to present to the court is

(Testimony of Miles H. Robinson.)

such and such," and that is just sort of a glorified way—in my own head, I thought if I am going to draw up a summary, I will draw it up as it would be argued before some court and just a casual idea on my part.

Q. At that time, did you have any specific court—at the [1462] time you wrote that, did you have any specific court action in mind?

A. No; except that I had been consulting attorneys in Walla Walla about it and shown them all my papers.

Q. About the statement, Dr. Robinson, which you prepared for the expulsion meeting, when was that prepared, the writing as it exists among the exhibits of this case?

A. That statement was mimeographed some weeks after the expulsion meeting.

Q. And what was the occasion of your preparing that writing?

A. I anticipated that I would have to submit that to the AMA at the hearing on my appeal and all I had during the meeting were some rough notes that I had made up and then during the meeting I further formulated those notes to fit with what was happening during the meeting, and then finally I had it mimeographed some weeks or it may have been a month after that.

Q. Did you actually read that statement at the hearing itself?

A. I didn't read that statement.

(Testimony of Miles H. Robinson.)

Q. What did you use as the basis for your remarks at that hearing?

A. Well, all I had was rough notes at the meeting and several loose pieces of paper.

Q. Do you have those notes still? [1463]

A. I think I do, but they are in Baltimore, I'm sorry to say.

Q. They are not available here and you don't anticipate they will be available during this case?

A. I looked for them, but I can't find them.

Q. Now, in that statement you made reference to the matter of a vote being taken and you predicated various statements on a vote being taken. You also testified on direct examination that you didn't anticipate any expulsion action at that meeting.

Will you explain what you meant by the reference in that statement to a vote being taken?

A. I am not absolutely positive whether I wrote down on my rough notes about a vote being taken before the meeting or during the meeting, but what I had in mind was that——

Mr. Rosling: If your Honor please, we are not concerned about what this witness had in his mind at that time, but what he wrote and what he did.

The Court: Yes; I think that is correct.

Q. (By Mr. Sembower): Well, did you anticipate at this meeting that an expulsion vote would be taken? A. No.

Q. When you referred to a vote being taken, to what did you have reference? [1464]

A. I thought there would probably be a vote

(Testimony of Miles H. Robinson.)

which would discredit this whole interference by the state grievance committee and we would have a return to our normal procedure.

Q. In that same statement, Dr. Robinson, why didn't you include in the statement any statement to the effect that you had asked Tom Brooks to come in and discuss his ailment with you, and so forth?

A. Oh, you mean in that letter, so-called letter, to the court?

Q. Yes.

A. Well, that was my relationship with Tom Brooks was implied in a number of things that I said in that document and I can recall roughly I spoke about the doctor-patient relationship being destroyed and a better solution would have to be worked out, and oh, there were three or four times in there where I mentioned the breakdown of the relationship between Tom Brooks and his wife and myself.

Q. Dr. Robinson, during the week between your conversation, the days between your conversation with Dr. Stevens on the street and your conversations with the Edwards and Brooks about the difficulty that had arisen, you testified as to various places that you had gone during that time. Did you stop at the Singer Sewing Machine store [1465] where Mr. Edwards worked during that week?

A. Since I was asked that question here some days ago, I was thinking over and going over my day sheets and records for that week and I believe it is quite possible that in my efforts to locate him,

(Testimony of Miles H. Robinson.)

I stopped by where he worked, which was there in Main Street somewhere there.

Q. In your letter to Dr. Berge dated April 13th, Plaintiff's Exhibit 92, you make reference in the fifth paragraph to:

"Therefore, I will not attend your hearing on April 22, 1951." To what did your term "therefore" refer?

A. As I answered this morning, it referred to the thought immediately before that, which was as follows: "It almost seems as if the more I stand up for my rights, the more popular I become with the public here." However, it also referred to the three paragraphs that stand further back ahead of that, and those paragraphs contain the following three items:

The first one was my complaint here—well, it says: "If Fullerton and others of his ilk," et cetera, "are going to conduct—" Well, I should read it, I will read it: "Your statement that Mr. Fullerton has been in charge of all arrangements for this hearing seriously unsettles my confidence in a fairly conducted hearing." Well, that is Item 1 which ends up in my decision not to attend. [1466]

Item 2 is in the third paragraph, "The Constitution of our local society has been flagrantly violated." And then a third item in that same paragraph is where I say I think I have given adequate answers on the Brooks affair. And then on the fourth item, I said: "I believe that the majority of doctors

(Testimony of Miles H. Robinson.)

in this or any other state will sympathize with my objections to this new hearing.”

So that made three or four times, and I end up with the statement at the end of the whole series, I say, “Therefore, I will not attend your hearing.”

Q. Doctor Robinson, in your reference there to Mr. Fullerton and his being in charge of the arrangements did you have in mind or were you referring to other activities than the ministerial activities that he might carry out as a secretary?

A. Yes; I was.

Q. What were those?

A. Well, he was simply the clearinghouse for everything that was done in the profession and so many things had been done to me, as I felt, namely, this preposterous Edwards complaint and this Brooks complaint, and him being secretary of the secret committee, I just felt that he was at the bottom of everything and that is why I objected to him. [1467]

Q. Now, Dr. Robinson, after you attended the November 21st meeting, which was the meeting held the night after the November 20th meeting at which the grievance committee matter was considered, what was your feeling, if any, about the status of all of these various matters?

A. At the end of the November 21st hearing?

Q. Yes; after the November 21st meeting?

A. Well, I thought the whole thing was done with, because toward the end of that hearing Mr. Brooks was taking a very placating attitude and Dr.

(Testimony of Miles H. Robinson.)

Page said, "Well, there seems to be two sides to this story," and I thought it was all over.

Q. When did you learn then thereafter that apparently the matter was still very much alive?

A. Well, that was on the day of the annual meeting, on December the 13th. Mr. Fullerton wrote me a letter, or Dr. Page did one or the other, saying that they had decided the Brooks complaint fell in a category of things they could refer to the state grievance committee.

Q. Dr. Robinson, you were asked this morning about whether you operated a wheat mill or not. Did you operate a wheat mill?

A. We bought a wheat mill for our home use, and I wanted to be able to supply fresh ground wheat flour for some of my patients as a curative measure and I was unable to [1468] get that wheat flour anywhere in this area, so until we could arrange for Mrs. Johnson to set up a mill, we did grind some at home for a few patients and it was distributed through the office on a non-profit basis.

Q. Did you realize any profit from it?

A. I would say it was a loss to us, as far as that goes.

Q. Did you ever match this activity against the AMA ethics? A. Yes.

Q. Did you consider that?

A. Yes; I considered very seriously whether I was doing anything wrong, but the wheat flour is to my mind in the exact same category as vitamins

(Testimony of Miles H. Robinson.)

and I was merely dispensing a form of a vitamin product, as far as I was concerned.

Q. And was there any other source whatever in this community for that type of flour?

A. No; there was no source anywhere for it. I would like to say that the AMA ethics forbids appliances. It doesn't say anything about nutritional supplements or anything of that kind.

Mr. Sembower: I think that is all, your Honor.

The Court: Let's see, I think Mr. Tuttle is first.

Mr. Tuttle: I have no questions, your Honor.

Mr. Rosling: No questions. [1469]

Mr. Kimball: No questions.

The Court: Very well, anybody else, then?

Mr. Smith: I have no questions.

The Court: That is all, then, Dr. Robinson.

(Witness excused.)

Mr. McNichols: We will call Mr. Fullerton as an adverse witness.

The Court: All right.

CHARLES E. FULLERTON

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined, and testified as follows:

The Court: I perhaps need not call attention to it, but the Rules of Civil Procedure provide for calling adverse parties as an adverse witness, and in this case where a defendant is called, the defendants' attorneys then have full right to cross-examination within the scope of the direct examination.

You all understand that?

Mr. Kimball: Yes.

The Court: All right, you may take the witness chair, please.

Direct Examination

By Mr. McNichols:

Q. Would you state your name, please, Mr. Fullerton? [1470]

A. Charles E. Fullerton.

Q. And what is your address?

A. Clinton Court, Walla Walla.

Q. You are the Charles E. Fullerton named as a defendant in this action? A. I am.

Q. What is your occupation, Mr. Fullerton?

A. District Manager of a hospital and medical association.

Q. Have you lived in Walla Walla for some considerable time? A. Eleven years.

Q. Directing your attention to the early part of

(Testimony of Charles E. Fullerton.)

the year 1950, were you at that time employed by the Walla Walla Medical Society?

A. I was the Executive Secretary of the medical society on a non-salaried basis.

Q. And when did you first take that employment or that position, I will say?

A. I believe it was in January of 1949.

Q. What other duties did you perform while you were holding that position?

A. I was also Manager of the Walla Walla Medical Service Corporation.

Q. Was that the job for which your salary was paid?

A. Yes, sir. [1471]

Q. Did you have any other official duties related to the medical society during that period?

A. No, sir.

Q. To just refresh your memory, you were, were you not, Mr. Fullerton, Secretary of the grievance committee?

A. Oh, yes, pardon me; I was secretary of the grievance committee when it was formed, yes, sir.

Q. Where was your office located, Mr. Fullerton?

A. 330 Drumheller Building.

Q. And how much office space did you have there?

A. At that time it consisted of three rooms.

Q. Was one of these rooms the office of the Medical Service Corporation, which we refer to as the bureau?

A. All three of them were used as the offices of the Medical Service Corporation.

(Testimony of Charles E. Fullerton.)

Q. Oh, there were three rooms altogether, then, is that right? A. Yes.

Q. Was any portion of that office used as the office for the Walla Walla Valley Medical Society?

A. They were all used for both purposes.

Q. And it was one office, in effect, for both organizations?

A. Yes, one suite for both organizations, yes, sir.

Q. Did you do all of the filing and office work for the society as well as for the bureau? [1472]

A. Are you speaking of me personally, sir, or the office?

Q. Well, in your position as secretary?

A. Yes, we did all the filing and kept all the record.

Q. In other words, you had a joint position there, in effect, with both organizations?

A. Yes, sir.

Q. Did you keep separate files?

A. Yes, sir.

Q. Separate files, that is, for the society and for the bureau? A. Yes, sir.

Q. When, Mr. Fullerton, were you appointed the secretary of this new grievance committee? Approximately?

A. About April, 1950, I believe, sir.

Q. And was that appointment in writing or by oral statement? How was that conveyed to you?

A. My memory is it was an oral statement.

Q. And who appointed you to that position?

A. My memory on that is Dr. Stevens did, sir.

(Testimony of Charles E. Fullerton.)

Q. At the time you were appointed as secretary of that committee, did you know who the other members of the committee were in addition to Dr. Stevens? A. I did not.

Q. Did Dr. Stevens tell you that he was the chairman of the committee? [1473]

A. I believe he did, yes, sir. Pardon me, he is the only member that I knew and I assumed probably that he was the chairman.

Q. Did you know that it was supposedly a committee?

A. Yes, I knew there would be a committee formed because I had heard previous discussion on it.

Q. Did Dr. Stevens have any discussion with you about the fact that the other members were unknown? A. Not that I recall, no, sir.

Q. Now, what directions did Dr. Stevens give you at the time he made this appointment?

A. Oh, I was to keep the records.

Q. I am referring now to the grievance committee.

A. Of the grievance committee, keep the records of the grievance committee, receive any complaints or inquiries that would come in, transmit them to him in writing, and to keep everything secret, confidential.

Q. You, of course, couldn't transmit them to anyone else, you didn't know what other members there were?

(Testimony of Charles E. Fullerton.)

A. Well, the purpose was to keep the employees of the office from getting into the files.

Q. And did you then proceed to keep records for the grievance committee?

A. There wasn't any, sir.

Q. There weren't any. Do you recall approximately when you [1474] got the first record for that committee?

A. Well, we got our first complaint in or inquiry along in the fall. I think it was about August of 1950.

Q. Prior to that time, you hadn't set up any files of any kind? A. No, sir.

Q. Had you taken any activity whatsoever with respect to any grievances?

A. With respect to grievances?

Q. Yes, prior to the date you have just mentioned, the last part of August, had you had anything to do with any grievances presented to you as secretary of the committee? A. No, sir.

Q. And, of course, you would have had no activities files then on the grievance committee?

A. No active file.

Q. Do you know, Mr. Fullerton, whether or not anyone other than Dr. Stevens knew that you were secretary of this committee?

A. I rather imagine that Dr. Page, the President of the society, knew it. I couldn't be sure.

Q. That is an assumption on your part?

A. That is an assumption on my part.

Q. Mr. Fullerton, when did you first meet or

(Testimony of Charles E. Fullerton.)

speak with Mrs. Noel Edwards, Joyce [1475] Edwards?

A. When she came into the office in, as I say, some time in August of 1950.

Q. You don't, from your own knowledge, remember the date now, I suppose? Well, I will show you Plaintiff's Exhibit 10, which purports to be a copy of a complaint by Mrs. Noel Edwards, and it bears your name at the bottom typewritten. Do you recognize that document? A. Yes, sir.

Q. Now, with respect to the date when you first met or heard from Mrs. Edwards, does that refresh your memory? A. August 29, 1950.

Q. Had you heard from her in any manner prior to that date? A. No, sir.

Q. She did come into your office on the 29th of August? A. Yes.

Q. Approximately what time of day, Mr. Fullerton? A. That I couldn't answer now, sir.

Q. Do you know whether it was in the morning or the afternoon? A. No, I do not recall.

Q. Did she at that time tell you the statement of facts that appears on this document, Plaintiff's Exhibit 10? A. Yes, sir.

Q. Did you at that time have any discussion with her about any matters that don't appear [1476] hereon? A. No, sir.

Q. Did you ever give an opinion at any time, Mr. Fullerton, as to whether or not the facts set forth in this purported complaint warranted a complaint by her? A. An opinion to who, sir?

(Testimony of Charles E. Fullerton.)

A. To anyone.

A. I do not believe so. I don't remember it.

Q. Pardon?

A. I don't recall that I ever did, no, sir.

Q. Could you have, do you suppose?

A. No, I doubt very much if I would have.

Q. As I understand it—well, perhaps you better describe briefly how this complaint was given to you and what you did at that time.

A. When she first came in the office, she stated her complaint or inquiry, whichever you may wish to call it—

Q. Did you consider it as an inquiry or as a complaint at that time?

A. Well, I think it could be called either.

Q. All right, go ahead.

A. And I took a piece of paper out of a desk and put it in the typewriter, and as she repeated it, I typed that statement that is on that letter as she gave it to me.

Q. And then did you dismiss her or did she leave?

A. That is my memory, yes, sir. [1477]

Q. Now, at that time did she make any statements to you as to whether or not she or her husband intended to sue Dr. Robinson over this matter, the dollar and a half matter?

A. Not that I can recall, no, sir.

Q. If she would have said that, would you have more than likely put it in the document?

(Testimony of Charles E. Fullerton.)

A. If she had formed that as a part of her complaint, yes.

Q. You don't recall any such conversation?

A. No, I do not.

Q. Then what did you do with that complaint?

A. Well, I unquestionably delivered it to Dr. Stevens, but whether or not the same day or the next, I couldn't say.

Q. Did you deliver it to Dr. Stevens personally?

A. Yes, sir.

Q. Did it come to your mind at the time this complaint was made that it was a statement based completely on hearsay? A. No, sir.

Q. It was, was it not, a statement by Mrs. Edwards of what someone else had done and said?

Mr. Kimball: If the court please, I believe that calls for the legal opinion of this lay witness, which I think is improper. [1478]

Mr. McNichols: I will rephrase the question.

Q. Mr. Fullerton, at the time this complaint was made to you, you got the facts which appear on there, is that right? A. Yes, sir.

Q. Well, it says here that the sister called Dr. Robinson on the phone and the sister induced vomiting, and so on. Did you ask Mr. Edwards if you could talk to her sister or anything?

A. Pardon me, sir?

Q. Did you ask Mrs. Edwards if it would be possible for you to talk to the sister? A. No, sir.

Q. To your knowledge, did anyone on behalf of the society, of the grievance committee, ever go and

(Testimony of Charles E. Fullerton.)

talk to this sister prior to the time they wrote the letter to the Edwards?

A. I have no knowledge of what the grievance committee or anyone else did, sir.

Q. In any event, you didn't? A. No, sir.

Q. At the time this complaint was made, Mr. Fullerton, you knew, did you not, that a short time prior thereto Dr. Robinson had resigned from the bureau?

Mr. Kimball: If the Court please, I object to that [1479] as a leading question.

The Court: Well, he has a right to ask leading questions. This is an adverse witness.

Mr. Kimball: Oh, yes; that's right.

Q. (By Mr. McNichols): Do you have the question, Mr. Fullerton?

A. Yes; I am trying to remember what date Dr. Robinson resigned from the bureau and I can't recall it.

Q. Well, perhaps I can bring you something that will refresh your memory.

Referring now to Plaintiff's Exhibit No. 11, which purports to be a letter from you directed to Dr. Robinson, that states, does it not, that his resignation was accepted by the board of trustees the night before?

A. Yes, sir. That is on August the 30th, sir.

Q. This is August 30th, it indicates the resignation was effective, was accepted, on the 29th. My question was, does that refresh your memory, did you have that in your mind at the time?

(Testimony of Charles E. Fullerton.)

A. Well, I can't recall now that I did, sir.

Q. Well, then subsequently, Mr. Fullerton, you wrote a letter to Mrs. Noel Edwards, did you not, concerning this complaint? To refresh your memory, I show you Plaintiff's Exhibit No. 15.

A. Yes, sir; I wrote that. [1480]

Q. Was that written on the date which appears thereon? A. Yes, sir.

Q. September 30, 1950? A. Yes, sir.

Q. That was a month after the complaint originally had been made, was it not?

A. Slightly over a month, yes, sir.

The Court: What is the date of that letter?

Mr. McNichols: September 30, 1950.

The Court: Yes, all right. Was that directed to Mrs. Edwards?

Mr. McNichols: Mrs. Edwards.

The Court: Mrs. Edwards. Are you through with 10? I just wanted to look at it for a moment if you are.

Mr. McNichols: Oh, yes. Just a second.

The Court: That is the Edwards complaint?

Mr. McNichols: Yes, your Honor, it is.

The Court: Had you finished interrogating regarding it?

Mr. McNichols: For the moment, I believe.

The Court: I see, all right.

Q. (By Mr. McNichols): Where did you obtain, Mr. Fullerton, the text of the letter which you have just seen that you wrote to the Edwards?

A. From Dr. Stevens. [1481]

(Testimony of Charles E. Fullerton.)

Q. That was by letter which is Plaintiff's Exhibit No. 14?

A. I believe that is the letter that I copied, yes, sir.

Q. Did Dr. Stevens present this letter to you?

A. Yes, sir.

Q. What instructions did he give you at that time?

A. To recopy it, sign it, forward it to the addressee.

Q. Did he also instruct you to send a carbon copy to Dr. Robinson?

A. He probably did; yes, sir.

Q. Do you remember whether or not Dr. Stevens stated whether he had investigated the complaint?

A. No, I do not, sir.

Q. Now, Mr. Fullerton, when was the first occasion that you talked with or saw Mr. Tom Brooks?

A. It was about October—can you give me the date when he called me on the phone, the Monday morning he called me, what day of the month that was?

Q. Perhaps this might refresh your memory. The copy of the so-called Brooks statement is plaintiff's Exhibit 18, indicates that a meeting was held Wednesday, October 11th, at 5:30 p.m.

A. Then, the first time I saw him was the day before during the noon hour, and I wish to correct my deposition, I was in error there in my answer in my deposition. The first time that I saw Mr.

(Testimony of Charles E. Fullerton.)

Brooks was when he came to [1482] the office on the Wednesday to file his complaint.

Q. Was it Wednesday or Tuesday? Now, the date I gave you, the date of the hearing was on Wednesday.

A. Wednesday?

Q. When was it you saw him first?

A. Tuesday during the noon hour at his place of employment.

Q. At his place of employment?

A. Yes, sir.

Q. How did you happen to go to his place of employment?

A. To notify him the hearing was to be held the next day at 5:30.

Q. Now, when did you first talk to Tom Brooks?

A. Well, the first time I ever heard from him was when he called me on the phone about 8:30 Monday morning.

Q. Monday morning; was that the 9th of October?

A. That would be the 9th of October, yes, sir.

Q. 1950? A. Yes, sir.

Q. And where were you at that time?

A. At home.

Q. Did he state how he happened to be calling you?

A. Not that I recall, no, sir. As to why he called me, no, sir.

Q. Had you ever heard of him before?

A. No, sir. [1483]

(Testimony of Charles E. Fullerton.)

Q. In that conversation on the telephone at your home, how long was that conversation, incidentally?

A. Oh, I would guess now it was 15 to 20 minutes.

Q. Did he at that time state to you the nature of this complaint he had against Dr. Robinson?

A. Yes, sir.

Q. What did you tell him?

A. I told him that I would not accept a complaint over the phone or take any action on it until I had reported it to the officers of the society.

Q. And then what did you tell Tom Brooks you would do then?

A. Oh, I think the previous answer, that I would report to the society and advise him whatever instructions I received.

Q. And then did you go to work that morning?

A. Yes, sir.

Q. Did Mr. Brooks say anything with reference to whether or not he had discussed this matter with a member of the society prior to calling you?

A. Not to my memory, no, sir.

Q. When you went to work, who did you report it to?

A. Dr. Sam Page, the President of the society.

Q. What time of day did you do that, do you remember?

A. I am sure it was before noon. Oh, I would say somewhere around 11:00, 11:30. [1484]

Q. Did you make any notes on the telephone conversation?

A. No, sir.

(Testimony of Charles E. Fullerton.)

Q. Did you write down the name of the person who called you?

A. Might have; I couldn't answer now whether I did or not.

Q. You don't have any memoranda relating to that telephone conversation? A. No, sir.

Q. Did Tom Brooks tell you on the telephone that he was related to Mrs. Edwards, the woman who previously registered a complaint with you?

A. I believe he did, sir.

Q. Did you later learn whether or not Tom Brooks had discussed this matter with a physician prior to coming to you?

A. Well, my answer to that would have to be hearsay. I either was told that or read it in the record sometime quite a little while later.

Q. You didn't have any knowledge of it during that period? A. No, sir.

Q. Did you ever later talk to the physician who had in fact talked to Tom Brooks?

A. No, sir.

Q. Now, following your reporting this matter— incidentally, did you just talk to Dr. Page about the complaint? [1485] A. Yes, sir.

Q. No one else?

A. I gave him the substance of it the best that I could of the complaint that had been filed as Mr. Brooks had given it to me.

Q. And then you proceeded to arrange for this meeting on Wednesday night, did you?

A. Not until I received instructions to do so

(Testimony of Charles E. Fullerton.)

from Dr. Page, which I believe was the next day, although it could have been the same evening.

Q. But you saw Brooks the next noon, is that right? A. I saw Brooks the next noon.

Q. Was it at that time that you told Brooks to be there on Wednesday evening?

A. Yes, sir.

Q. And was it you that arranged for the trustees of the society to be there?

A. Under instructions, I called the trustees of the society, yes, sir.

Q. Did you also arrange for the members of the grievance committee to be there?

A. Well, I told Dr. Stevens. Now, whether or not I was given instructions to notify who later I found out were members of the grievance committee or not, I couldn't say, or whether somebody else notified them to be there. [1486]

Q. You say you told Dr. Stevens about it?

A. I notified him that the meeting—pardon me, I am in error there, because Dr. Stevens wasn't in town, couldn't have.

Q. Oh. Well, it might refresh your memory if I show you a copy of the Brooks complaint, which is Plaintiff's Exhibit 18. It purports to state at the top who was present there. Did you notify all of those people to be present?

A. I rather believe I did, yes, sir.

Q. Did you take care of notifying the society attorney and the stenographer?

A. I notified Miss Curts, the stenographer. I am

(Testimony of Charles E. Fullerton.)

not so sure but what Mr. Kimball wasn't consulted by Dr. Page as to procedures and policy, and I couldn't answer your question.

Q. I understand you were operating under the directions of Dr. Page?

A. That is correct, exclusively.

Q. Did Dr. Page specifically mention that he wanted a stenographer there? A. Yes, sir.

Q. Do you remember whether or not when Tom Brooks called you, he referred to any specific disease?

A. No, I do not, without going back and re-reading his [1487] deposition, or his statement, I couldn't answer whether he did or not.

Q. Did you read his deposition lately?

A. No, sir, I have never seen it.

Q. I was just wondering about your recollection of the telephone call.

A. The main recollection I have of the telephone call was what I assumed to be a charge of blackmail, and I was on my guard from that time on and listened to the whole complaint as Mr. Brooks gave it to me and kept that reservation back in my mind, that this is too serious for me to make any statements to him or accept any.

Q. Going back to the Edwards complaint, was that the first complaint you had received in your status as secretary of the grievance committee?

A. Yes, sir, the Edwards complaint, yes, sir.

Q. Was the Brooks complaint the second one you had received? A. Yes, sir.

(Testimony of Charles E. Fullerton.)

Q. Did you receive any others?

A. I can recall two more that came quite some-time later, yes.

Q. How long later, approximately?

A. Oh, I would say either in the spring or summer of 1951, somewhere along through there.

Q. Were those written complaints? [1488]

A. Pardon?

Q. Were those written complaints?

A. Yes, sir.

Q. Did you set up files in your grievance committee files on those?

A. Well, they were delivered to Dr. Stevens and if they ever came back to my office, they were put in the files, yes, sir.

Q. In other words, if those complaints had been made in writing and never returned, they would presently be in the files of the society or the bureau?

A. They would be in the files of the society.

Q. Did you have a special file of the grievance committee?

A. Yes, sir, a locked steel file.

Q. But until 1951, those are the only two complaints you functioned on, is that right?

A. Yes, sir.

Q. Were you present, Mr. Fullerton, at the meeting when Tom Brooks made his complaint, which was on the 11th of October at 5:30 p.m.?

A. Yes, sir.

Q. And did you hear the proceedings?

A. Yes, sir.

(Testimony of Charles E. Fullerton.)

Q. Where were you during this meeting?

A. I was in one of the work rooms of the suite. [1489]

Q. You were in a position where you weren't visible but you could listen?

A. I was in a position where I could see Mr. Brooks but none of the rest of the members that were there.

Q. Could they see you?

A. No, they could not see me, either.

Q. You could hear what transpired?

A. Yes, sir.

Q. Did you keep any notes on what transpired?

A. No, sir.

Q. Have you ever arranged for such a meeting before, Mr. Fullerton?

A. You mean a hearing like the Brooks hearing?

Q. Yes.

A. No, sir, we never had one before.

Q. Did you ever have one since?

A. Only the state grievance committee.

Q. I am not speaking——

A. No, we did not ever have another meeting of the same type, no, sir.

Q. Were you the one, Mr. Fullerton, who instructed Miss Curts to prepare a transcript of that hearing, or do you recall?

A. I don't remember whether I was the one who instructed her or Mr. Kimball or Dr. Page. I could have been the [1490] one who did so, yes.

(Testimony of Charles E. Fullerton.)

Q. Was she told that night to the best of your knowledge to prepare one?

A. Yes, sir, to the best of my knowledge, yes, sir, and to expedite it.

Q. To expedite it. Who instructed her to expedite it?

A. I don't remember, but I remember of going down to see Miss Curts, oh, I think once or twice, asking the status of it.

Q. Where was Miss Curts officing at the time?

A. She was court reporter in the Superior Court, she was in the court house.

Q. You went down to see her about it?

A. Yes, sir.

Q. When, approximately, do you remember?

A. I wouldn't have any specific knowledge. I would say probably 10 days after the hearing and maybe again two weeks, three weeks, after the occasion.

Q. On at least two occasions, you went down to see her?

A. I would say at least two occasions. Might have called her on the phone, for all I can remember now.

The Court: How do you spell that name? It has been mentioned a number of times. Miss Curtz?

Mr. McNichols: C-u-r-t-s.

The Court: C-u-r-t-s. Was she the official court [1491] reporter for the Superior Court for Walla Walla County?

A. Yes, sir. Jury trial at that time.

(Testimony of Charles E. Fullerton.)

Q. (By Mr. McNichols): Did you notify Dr. Robinson of this complaint having been made?

A. I can't recall that I ever did, no, sir.

Q. Of course, he was notified for the November 21st hearing, but I meant other than that?

A. Well, I don't identify the hearing that you mean by the November 21st hearing, sir.

Q. Well, there was a hearing held, for your information, Mr. Fullerton, on the 21st of November before the trustees of the local society on the Brooks complaint. I don't know if you were present at that meeting or not.

Did you take any action on this matter, Mr. Fullerton between the time that Mr. Brooks made his complaint and the time the hearing was held in November?

A. The only action that I can recall of taking, sir, was to inquire of Miss Curts possibly a time or two when we might receive the transcript.

Q. Did you get any instructions from any official of the society to communicate with the state grievance committee during that period?

I will refresh your recollection. It is hard for you to remember, I know.

A. I can't remember dates. [1492]

Q. When did you get the transcript, incidentally, from Miss Curts? Do you remember approximately?

A. Almost exactly a month after it was given, after the hearing.

Q. Somewhere close to the 11th of November?

(Testimony of Charles E. Fullerton.)

A. Very close to that, the 9th or 11th or somewhere almost exactly a month later.

Q. Well, now, I will show you Plaintiff's Exhibit No. 23 for identification—oh, I see, no, that is admitted—Plaintiff's Exhibit No. 23, which purports to be a letter dated October 16, 1950, from Mr. Fullerton to Mr. Neill, and ask you if you have seen that document before or the original of it? This is a photostatic copy. A. Yes, sir.

Q. Is that a letter that you wrote to Mr. Neill on the 16th of October, 1950? A. Yes, sir.

Q. Under what direction did you write that letter, Mr. Fullerton?

A. Well, my memory now is at the direction of Dr. Stevens. We were attempting to find out where we might find rules and regulations governing a grievance committee, its operations and its functions.

Q. What grievance committee are you referring to, state or local? [1493]

* * *

Q. You weren't at that time familiar with any other situation that it could be referring to, were you? A. No, sir.

Q. Now, Mr. Fullerton, showing you Plaintiff's Exhibit No. 24, which purports to be a letter from R. W. Neill of the Washington State Medical Association, dated October 17, 1950, directed to "Dear Charlie," would you examine that exhibit, please?

A. Yes, sir, this is Mr. Neill's answer to my previous letter, is it not?

(Testimony of Charles E. Fullerton.)

Q. I am asking you, I assume it is. You are the "Dear Charlie" referred to in that letter?

A. That is correct, yes, I got this letter.

Q. And that letter answered the numbered paragraphs of your letter of October 16th?

A. Correct.

Q. Is your memory refreshed any better, Mr. Fullerton, as to whose instructions you were acting under in this inquiry?

A. No, I do not recall. If Dr. Stevens was not yet in town, I don't recall who gave me the instructions.

Q. With whom were you dealing within the society primarily about this hearing and this grievance committee meeting? With Dr. Page?

A. Frankly—either Mr. Kimball or Dr. Page exclusively, I [1496] would say.

Q. Did you convey to any officials of the society the context of the letter which Mr. Neill wrote back to you on the 17th of October?

A. My answer would be I must undoubtedly have given it to the person who asked me to write the original letter.

Q. Did you tell them that Mr. Neill had informed you that there were no rules and regulations for the state grievance committee as yet?

A. Well, that is what the letter states, does it not?

Q. Well, I will read it. That isn't exactly what it states, but it says—well, I will read the letter briefly:

(Testimony of Charles E. Fullerton.)

“1. The House of Delegates approved formation of a state Grievance Committee, to be appointed by the Board of Trustees, next meeting being scheduled for October 29, Seattle.

“5. Except those contained in the amendment to the Bylaws, which authorized formation of the Committee, the rules and regulations have not been adopted.”

I assume your purpose, Mr. Fullerton, in writing Mr. Neill was to find out how the state committee would function and in what manner, was it not?

A. I believe that is correct, sir. [1497]

Q. Do you recall reporting back to anyone and stating, in effect, that they had no rules and regulations yet?

A. Well, again I state that unquestionably I showed that letter to whoever instructed me to write the original letter.

Q. I will show you Plaintiff's Exhibit No. 39, Mr. Fullerton, which is a letter from the Walla Walla Society to Dr. Robinson, signed by Sam R. Page as President. You may not have seen that before. Tell me whether or not you have or a copy of it, if you remember?

A. Well, I couldn't answer now, sir, whether I ever saw the letter at the time it was written or whether it came to my attention later for filing.

The Court: What number is that, please?

Mr. McNichols: That is No. 39, your Honor.

The Court: Oh.

Q. (By Mr. McNichols): Well, this letter, Mr.

(Testimony of Charles E. Fullerton.)

Fullerton, if it refreshes your memory, directed Dr. Robinson to appear at a meeting of the trustees to be held on the 21st of November, 1950. The letter was dated November 10, 1950.

Now, between the 10th of October and the 10th of November of that year, did you have occasion to see Dr. Robinson?

A. Possibly did have, yes, sir. [1498]

Q. Do you know whether or not you talked with him?

A. No, I do not recall any conversations with the doctor during that period.

Q. Did you ever inform him that a complaint had been made against him?

A. Pardon me, sir?

Q. Did you ever inform him that a complaint had been made against him by Mr. Brooks?

A. I don't remember now that I ever did, no, sir. May have.

Q. Do you recall whether you were ever requested by any official of the society either to inform him or not to inform him?

A. I was never instructed not to inform him and I do not recall ever being requested to inform him.

Q. Well, this was somewhat of an unusual matter, was it not?

A. Well, it was to me, yes, sir.

Q. It was an unprecedented meeting of October 11th, was it not, when Mr. Brooks made his complaint?

(Testimony of Charles E. Fullerton.)

A. Well, there was no precedent before it, no, sir.

Q. To your knowledge, has there ever been a member of the society disciplined in that manner or in any similar manner?

A. Not that I know anything about, no, sir.

Q. Well, to your knowledge, Mr. Fullerton, did Dr. Robinson [1499] have any knowledge whatsoever that a complaint had been made by Mr. Brooks prior to your writing to the state association?

A. You say to my knowledge?

Q. Yes.

A. I would have no knowledge of it, no, sir.

Q. You don't recall whether there was any other way he might have learned of it?

A. I wouldn't know whether any of the other members that attended the meeting may have told him, no, sir.

Q. Now, Mr. Fullerton, between the time that Brooks made his complaint to this meeting, at which I believe you testified you were present, and the hearing of November 21st, did you have any communication with Tom Brooks?

A. Well, I remember an occasion or two where Mr. Brooks asked me with regard to whether or not Miss Curts had completed the transcription.

Q. Where did you see him?

A. Pardon me, sir?

Q. Where did you see Mr. Brooks?

A. I don't know that I saw him. Probably he

(Testimony of Charles E. Fullerton.)

called me on the phone. Might have seen him somewhere.

Q. On how many occasions would he have done that?

A. Well, I can recall one, but whether there were more, I wouldn't say. [1500]

Q. Now, these questions are directed to the period between the 10th of October and the 21st of November. During that period, did you have any communication with any other members of the Brooks family or the Edwards family?

A. Not that I can remember, no, sir.

Q. Did you write any letters to them? I am merely testing your memory, I don't know myself whether you did or not.

A. The only letter I ever wrote to any of the members of the family was the one that was given me by Dr. Stevens.

Q. That was the earlier one we have discussed before?

A. I don't know whether that came within this period right at the present.

Q. What I am wondering about, a number of the members of the family appeared at the hearing of November 21st relative to Mr. Brooks' complaint.

A. You say a number of them did?

Q. Yes. Do you know who communicated with them?

A. I probably did. That was the duties that I was performing at that time, I probably instructed

(Testimony of Charles E. Fullerton.)

them to be there. Was that the meeting that was held at Dr. Ralston's office?

Q. Yes.

A. Unquestionably, I would say that I must have instructed them to be there or asked them to be there.

Q. Do you remember whether you wrote to them or telephoned [1501] them or how you did it?

A. No, I do not, I don't remember now.

Q. Were you acting under someone's directions at that time? A. Yes, sir.

Q. Do you recall now who it was?

A. Dr. Page.

Q. Did he specifically tell you who he wanted present? A. He must have.

Q. You would have made no decision on anything of that yourself? A. No, sir.

Q. Are you fairly certain, Mr. Fullerton, that you didn't have any communication with Mrs. Edwards prior to the time she came in your office?

A. Absolutely. Positive that I did not.

Q. Now, with respect, Mr. Fullerton, to the transcript of the November 21st hearing, do you recall approximately how long it was from the time that hearing was held until the transcript was prepared?

A. To be certain, I wish to again identify the November 21st hearing. Is that the one at Dr. Ralston's office?

Q. Yes, that was the one at which——

A. No, I do not recall how long it took Miss Curts to produce it.

(Testimony of Charles E. Fullerton.)

Q. Do you recall with respect to that particular meeting, [1502] the one you referred to as the one in Dr. Ralston's office, whether or not you had ordered the transcript of that from Miss Curts at the time it was taken?

A. I doubt very much if I did because I wasn't present at that meeting.

Q. You don't remember ordering the transcript?

A. No, I do not.

Q. Well, tell me, Mr. Fullerton, if this refreshes your memory. I am reading from Page 54 of Plaintiff's Exhibit 97, which is a transcript of the hearing before the Grievance Committee of the Washington State Medical Association, held in the Marcus Whitman Hotel on the 22nd of April, 1951.

First of all, did you attend that hearing?

A. I was called in and testified, yes, sir, and the rest of the time I was not present at any of the other testimony.

Q. At this particular point, Dr. Berge is questioning:

“Give us in your own words what happened to your little baby.”

He is questioning Mrs. Noel Edwards, Joyce Edwards.

“A. My mother was shifting houses and had packed different goods in boxes and this youngster here, not quite two, got into the box of Ex-Lax and she had [1503] both boxes and noticed it in her mouth and called Dr. Robinson. He said to make her vomit and he would send a prescription or call

(Testimony of Charles E. Fullerton.)

the drug store and have them fix a prescription and if that didn't do it we would have to take her to the hospital. I came home and was getting worried because he did not leave the prescription. I called and he said, 'Oh, I have forgotten,' and he told me to give her epsom salts.

"Q. Are you sure that is what it was?

"A. It wasn't me, it was my sister.

"Q. Are you quite sure it was epsom salts?

"A. I am quite sure that is what he told her. He said he didn't think we would give it and she couldn't go to sleep and was crying. When I got this statement, I called. The reason I made the check, we hadn't gotten the prescription and he said it was for the phone call. I didn't think he was warranted in that. In my opinion, it was my youngster's life if we couldn't make her vomit and [1504] he said that was definitely what it was for. I called Mr. Fullerton and asked if I could make a complaint and he said it wasn't warranted."

Does that refresh your memory?

A. As to whether or not I had previous communication?

Q. Yes.

A. With her. I do not recall that statement at all, no, sir. I am not denying that it wasn't made, I am just saying I do not recall ever having discussed with her or seen her before she came into the office.

Q. Well, would it refresh your memory possibly

(Testimony of Charles E. Fullerton.)

if I told you that the incident about the child occurred in the early part of June of 1950?

A. No.

Q. Assuming the statement in the Edwards complaint to be a complete statement which you typed up, do you think from examining that statement you might have made the statement that a complaint wasn't warranted on that?

A. No, I do not think there is anything in this that would indicate to me that I had ever talked to her before.

Q. No, no, perhaps I didn't make it clear, Mr. Fullerton. From the facts set forth, the statement of facts as set forth in that complaint, do you think you might have made the statement that if you had heard those facts [1505] before, that a complaint wasn't warranted? Read it, if you so desire.

A. I know completely what is in there. No, sir, I was making no decisions at that time, and that was more in the way of an inquiry, I place it, than a complaint, and I referred it to the authorities to whom I had been instructed to give it to.

Q. Had you, Mr. Fullerton, some feeling prior to the 29th of August, that you and Dr. Robinson weren't on the best of terms?

A. Well, I would answer your question this way, sir: After Dr. Robinson bought Dr. Campbell's practice, and just when that was, I don't remember, pretty much all relations between Dr. Robinson, his office and our office, ceased, and I wouldn't say that

(Testimony of Charles E. Fullerton.)

that was strained relations or anything. He was busy and we were busy.

Q. Would you say that the relationship was different than it had been with Dr. Robinson? I am speaking of you, yourself, and Dr. Robinson?

A. Well, prior to the time that he bought Dr. Campbell's practice, he did considerable welfare work and I used to go up to his office up on——

Q. To the house where he officed?

A. In the house where he lived, and helped him prepare his state billings and talked with him quite a number of [1506] times.

Q. Then his association with your medical bureau, his activity decreased when he went into Dr. Campbell's office?

A. Well, the situation, my office and his office, the girls did the business, rather than Dr. Robinson and I doing the business. In other words, he had help and there was help in my office and they ironed out the problems.

Q. Summing it up, during that period did you feel that the relations between yourself and Dr. Robinson were more strained than they had been before?

A. I am having trouble trying to define your word "strained." We never had any words.

Q. Was there a change?

A. There had been a change.

Q. In your relationship?

A. Yes, sir, there had been a change in our relationship.

(Testimony of Charles E. Fullerton.)

Q. And as a result of that change, were you less friendly with him or was he less friendly with you? Was your relationship friendly?

A. Well, the best answer I can give you on that, I used to have trouble getting him to speak to me. I would say hello and he would walk right by without even looking. That is the best answer I can give on strained relationship. [1507]

Q. Can you pin that down in time?

A. A number of times I have gone out of my way to speak to the doctor when he was walking down the street. He may have been preoccupied, I don't know, but I made an attempt to speak to him when I would see him, and many times he would pass me by without answering me.

Q. Was that after the Edwards complaint had been made or before?

A. I couldn't pin point it down to that, no, sir. I can pin point it down to after he had bought Dr. Campbell's practice.

Q. When you communicated with Mr. Neill shortly after the Brooks complaint was made, that is, the week of the 16th, 17th, of October, had you been told by officials of the society that they were going to press this matter with Dr. Robinson through the state grievance committee?

A. No, sir, no one told me they were going to press this through the state grievance committee.

Q. Well, then, what was said to cause you to make these inquiries?

A. Someone probably instructed me to write and

(Testimony of Charles E. Fullerton.)

see if there was a grievance committee and, if so, who they were and how to get in touch with them, what their rules and regulations were.

Q. Did they indicate it was with reference to Dr. Robinson? [1508]

A. Well, I don't recall anyone ever brought up that question, no, sir, or made that statement.

Q. There was no question in your mind that that is what it was related to?

A. I think it must have been, yes.

Q. Well, then subsequently in these proceedings, Mr. Fullerton, you did most of the leg work in setting up the meetings and arranging for a stenographer and hotel room, and so on, primarily for the state grievance committee meeting, did you?

A. I went to the management and arranged for a hearing room, I made hotel reservations, for the doctors that were going to be here overnight, and I think that was all I did.

Q. Did you ever proofread these transcripts with Miss Curts? A. No, sir.

Q. Did you or anyone under your direction ever retype any of these transcripts? A. No, sir.

Q. Copy them? A. No, sir.

Q. Did you ever have them in your office for any purpose during this period, the copies of the transcripts?

A. Well, Miss Curts, of course, delivered the first one to my office and they immediately went out to the members [1509] of the trustees and the others who were interested in this.

(Testimony of Charles E. Fullerton.)

Q. Also, you sent a copy to Tom Brooks, did you?

A. I believe I did, and also gave one to Dr. Robinson.

Q. Had someone instructed you to send a copy to Tom Brooks?

A. I won't say that I gave Mr. Brooks a copy, I couldn't answer that definitely. But if he got one, I must have given it to him.

Q. Well, I had forgotten more or less, too, but I will show you Plaintiff's Exhibit No. 54, which purports to be a letter of December 13, 1950, written by you to Mr. Thomas Brooks—

The Court: What number is that?

Mr. McNichols: That is No. 54, your Honor.

A. Yes, sir.

Mr. McNichols: Perhaps that hasn't been admitted.

The Court: No, it hasn't. Yes, that is not in evidence.

Q. (By Mr. McNichols): Would you please tell the Court what that letter purports to be?

A. It is a letter which I wrote to Mr. Brooks advising him that upon instructions of Dr. Page, President of the Board of Trustees, I was transmitting to him a copy of the transcript, I was forwarding him a copy of the transcript. [1510]

Q. Of the second meeting of the Board of Trustees held to hear the answer of Dr. Miles Robinson to the original complaint of Thomas Brooks.

(Testimony of Charles E. Fullerton.)

Would you read the second paragraph, please, Mr. Fullerton?

The Court: This isn't in evidence. Do you want to admit it?

Mr. McNichols: Oh, I will submit it, your Honor, I'm sorry. Is there any objection to that?

Mr. Kimball: No objection.

The Court: Plaintiff's Exhibit 54 will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 54.)

Mr. Kimball: Is this the same letter that went to Dr. Robinson?

Mr. McNichols: I think it is almost identical, Mr. Kimball.

The Court: That would be 53, then.

Mr. Kimball: No objection.

Q. (By Mr. McNichols): Just read the second paragraph briefly, Mr. Fullerton.

A. (Reading):

"This transcript was delivered to the Executive Secretary, by the reporter, in the [1511] late afternoon of December 12, 1950."

I believe. Yes, sir.

Q. Fine. You enclosed a copy of that transcript in that letter to Mr. Brooks?

A. Unquestionably must have, yes.

Q. Pardon?

A. Unquestionably, I must have, yes.

Q. One thing, Mr. Fullerton, did you have a dis-

(Testimony of Charles E. Fullerton.)

cussion with Miss Curts when you obtained this transcript from her?

A. The second one, sir, or the first one?

Q. Well, let's take the first one first?

A. Did I have a discussion with her?

Q. Yes. You mentioned it was to be expedited earlier, I believe, didn't you?

A. At the time the hearing was held, we asked her to hurry as fast as she could, yes.

Q. Did you with respect to the second hearing request Miss Curts to prepare the transcript?

A. Well, I don't recall that I did, sir, because I wasn't present. I wasn't present at that hearing, so I doubt if I saw Miss Curts when she left.

Q. Do you recall telephoning Miss Curts about that transcript, the second one?

A. I have a recollection——

Q. Do you recall calling her and then her saying that no [1512] one had ordered a transcript?

A. No, I don't recall that. I do remember of calling her and asking her if it would be possible for her to have it ready on some date or something of that nature, and she said in order to do it, she would have to work all night, and I think she prepared it, I guess she did work all night and prepared it.

Q. That is what I was getting at. Did she later tell you she worked all night preparing it?

A. Just seems to me I remember her saying that, yes.

Q. Now, that was delivered to you, I believe, according to the statement in Exhibit 54 which we

(Testimony of Charles E. Fullerton.)

just referred to, in the later afternoon of December 12, 1950. Was your conversation with her the day before that?

A. Well, I wouldn't say just how soon it was before that delivery that conversation was. I don't know whether it was the day before or two days before.

Q. Did you ask her to work all night to get it out?

A. No, I didn't. She said she would have, I remember that.

Q. You requested it for the next day, did you, when you talked to her?

A. That I couldn't say, what my request was.

Q. You do recall a conversation?

A. I recall a conversation and I recall she, in order to get it on the deadline we asked, she would have to work [1513] all night.

Q. Do you recall in that same conversation her saying to you that no one had ordered one?

A. No, I do not recall that.

Q. Could such a statement have been made, to the best of your knowledge?

A. Could it have been by her?

Q. Yes. A. Yes.

Q. One thing, Mr. Fullerton, when did you resign your position with the bureau or the society?

A. April 1, 1952.

Q. At all times from April of 1950, and until your resignation, did you serve in these three capacities to which you have testified?

(Testimony of Charles E. Fullerton.)

A. Well, I served as Executive Secretary of the society from January, '49, Manager of the Bureau from '45, and Secretary to the grievance committee from around April, 1950, on.

Q. Did you have charge of keeping the minutes of the society meetings? A. Yes, sir.

Q. Did you prepare them yourself or were they prepared under your supervision?

A. You mean the actual typing as shown in that book? [1514]

Q. Yes.

A. I would take them at the meeting and dictate them to my secretary and she would write those up.

Q. You made notes on them or do you take shorthand?

A. No, I do not take shorthand, sir.

Q. Make rough notes? A. Rough notes.

Q. Transcribed them? A. Yes, sir.

Q. They were prepared then in your office, were they?

A. Some of those minutes were made by doctors at meetings in which I was not in attendance.

Q. Oh, you didn't prepare them all, then?

A. No, not all of them, no, sir.

Q. Did you, Mr. Fullerton, in your keeping these minutes, did you keep track of all the discussions that were held with respect to a given motion?

A. No, sir, no discussions.

Q. You would merely put the formal motion in?

A. Took the corporate action, that was all that

(Testimony of Charles E. Fullerton.)

was recorded, tried to record who spoke on the motions.

Q. Numerous things could occur in the meetings, then, which aren't reflected in the typewritten minutes?

A. Oh, yes, private discussions and discussions about subjects that were not before the house, they were not [1515] recorded in the meetings in any way.

Q. How about the discussions of motions?

A. Discussions of motions, the people who talked on those motions, I tried to record who did it, not what they said.

Q. As to the name, but not as to the context?

A. Not as to the context, no, sir.

Q. Were you present, Mr. Fullerton, at the meeting of the society held on May 22, 1951? To refresh your recollection, that was the so-called expulsion meeting at which Dr. Robinson was expelled.

A. I would have to look at the records.

Q. All right, I will find it here for you in just a moment.

A. There was a meeting held at the hospital at which I was not in attendance.

Q. If your name appears here as members present, C. E. Fullerton, Executive Secretary, you would more than likely be present?

A. One of these I was excused and someone else——

Q. A society meeting? A. Yes, sir.

Q. Well, perhaps——

(Testimony of Charles E. Fullerton.)

A. I would have to search that record out, because one of those meetings held Dr. Robinson and I both were excused from the meeting, we both sat out in the hall of [1516] the hospital.

Q. Well, showing you the last page of the meeting of May 22, 1951, I see meeting adjourned at 11:30 p.m., Leroy Carlson, M.D., Secretary, C. E. Fullerton, Executive Secretary.

Does that refresh your memory?

A. I think that was the meeting at which I was not present.

Q. You were not present at the meeting of May 22nd?

A. I think that is the one. To be absolutely positive, have to search that whole record.

Q. Did you also, Mr. Fullerton, keep the minutes of the board of trustees of the society?

A. All at which I was in attendance, yes, sir.

The Court: Time for recess, I think. I will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. McNichols): Now, Mr. Fullerton, to digress just a moment, with respect to the letter which you wrote to the Edwards family on either the last of August or the first of September, did you mail that on the date that appears on the letter?

A. I would say undoubtedly, yes, sir.

Q. Deposited it in the mails in the ordinary manner?

A. Yes, sir, undoubtedly. [1517]

Q. Did you in keeping your minutes of the meet-

(Testimony of Charles E. Fullerton.)

ings of the society and the board of trustees normally make mimeographed copies?

A. Only in specific instances, I think, because they were always read back at the next meeting.

Q. Did you only do so when you were requested to do so?

A. Instructed to do so, I believe so.

Q. The reason I am asking, I notice a number of them are mimeographed. What was the purpose of mimeographing the minutes?

A. Probably instructions to pass them around to all of the interested parties, all the members of either the society or the bureau or the trustees.

Q. When were they mimeographed with respect to the date of the meeting?

A. That would be the next day.

Q. The next day?

A. I would dictate them.

Q. Did you ever incorporate anything in the minutes that didn't take place at the meeting?

A. Not that I can ever recall, no, sir.

Q. One reason I was asking, I am showing you Defendants' Exhibit No. 446, minutes of the meeting of the board of trustees of the society held on the 18th of July, 1950. There is some question here as to why the following [1518] statement appears to have been typewritten in:

“Dr. Keyes moved, seconded by Dr. Lange, that the ruling of the Chair be confirmed. Motion carried.”

Can you explain that?

(Testimony of Charles E. Fullerton.)

A. No, I cannot, sir, unless——

Q. Did you have that typewritten in there?

A. The procedure would have been I would have dictated this to my secretary and she would have made this up. And unless she may have made a mistake and corrected it herself. Those were all read back and approved.

Q. The minutes were obviously mimeographed without that statement in there, were they not?

A. I couldn't tell you now why that is inserted that way unless she made an error and after she had completed her mimeographing, she run it through her machine and put it in.

Q. Are you familiar with mimeographed copy and typewritten copy?

The Court: What is the reference here?

Mr. McNichols: This sentence, your Honor (indicating).

The Court: Oh.

Mr. McNichols: That follows between the two.

The Court: Oh, I see. [1519]

A. Is that bond paper or is that mimeograph paper? Well, it looks to me like this is typewritten, all typewritten, on mimeograph paper.

Q. (By Mr. McNichols): Oh, you mean the entire entry is typewritten?

A. Looks to me like it. That is not bond paper. It looks to me like it is all typewritten on mimeograph. However, that is only an assumption on my part.

(Testimony of Charles E. Fullerton.)

Q. Would you say this is also typewritten, the page facing those minutes we referred to?

A. They look exactly the same to me, the two of them. They are both on mimeograph paper.

Q. Well, are you familiar with the appearance of mimeograph printing on paper?

A. Oh, yes.

Q. Have you used it extensively in various work?

A. We had a machine in our office and we used to grind out reams of it, yes, sir.

Q. Would you say that that was a mimeographed sheet facing the minutes of July 18, 1950?

A. No, that looks like mimeograph to me and probably was submitted to every member.

Q. But it is your opinion that all of the minutes for July 18, 1950, were typewritten from examining them?

A. No, no; I am going to have—— [1520]

Q. It appears to be a mimeograph, doesn't it?

A. I am going to have to retract my statement and say that part other than the two lines, I believe, are mimeographed, yes, sir.

Q. In other words, you would say that the following sentence was typed in after they were mimeographed:

“Dr. Keyes moved, seconded by Dr. Lange, that the ruling of the Chair be confirmed. Motion carried.” A. Uh-huh.

Q. Just one more reference, Mr. Fullerton, to the minutes of an emergency meeting—I am read-

(Testimony of Charles E. Fullerton.)

ing from the title of an entry in Defendants' Exhibit 447—which reads as follows:

“Minutes of the Emergency Meeting of the Board of Trustees of the Walla Walla Valley Medical Society Held at the Marcus Whitman Hotel, November 28, 1951.”

Your name appears at the bottom of the first page as C. E. Fullerton, Executive Secretary. Do you know whether or not you prepared those?

A. Yes, sir, I did.

Q. There was just one entry here that puzzled me. It may not be too important. The meeting was obviously held, according to the date, on November 28, 1951, and I find [1521] the following paragraph:

“The Executive Secretary further explained that a copy of the brief had not been received by either the President, Secretary, or Executive Secretary of the society, nor had the society been advised of the hearing to be held in Los Angeles.”

This is referring to the brief in the Miles Robinson case. Then the following entry:

“That a copy of the brief had been received from the Washington State Medical Association.”

Do you remember whether or not you actually received a brief from Dr. Robinson on that matter?

A. From Dr. Robinson?

Q. Yes.

A. No, sir, I would say that that paragraph meant that we got one through regular mail later from the Washington State Medical Association, not from Dr. Robinson.

(Testimony of Charles E. Fullerton.)

Q. Well, the thing that I was concerned about was it states that the brief of the Washington State Medical Association was received by regular mail Thursday, November 29, 1951, and that you reported that at the meeting of November 28th. I just wondered if these minutes really [1522] truly reflect what occurred at the meeting. It may be just a mistake. No sense wasting a lot of time.

A. I can't answer.

Q. You can't explain that?

A. I can't explain, no, sir.

Q. Were there numerous instances, Mr. Fullerton, where the minutes of the society might have been changed or added to after the meeting for one reason or another?

A. Not that I can recall, no, sir.

* * *

Cross-Examination

By Mr. Kimball:

Q. Mr. Fullerton, I hand you what has been marked Plaintiff's Identification 53 and ask you if you know what that is?

A. Well, that is a letter from me to Dr. Robinson.

Q. Did you write the letter?

A. Yes, sir. [1523]

* * *

THOMAS RICHARD BROOKS

called and sworn as an adverse witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Thomas Richard Brooks.

Q. Where do you live, Mr. Brooks?

A. 415 North Fifth Avenue, Walla Walla, Washington.

Q. And what is your occupation?

A. At this time I am an operator of a service station.

Q. At what location?

A. At Fourth and Pine, known as 410 North Fourth Avenue, Walla Walla.

Q. Mr. Brooks, you have lived in a number of different residences, have you not, the last few years?

A. I have lived in this present address from the 1st of May, 1950.

Q. Where did you live prior to that, if you recall?

A. At 1032 Valencia and 1016 Valencia, 215 North Madison.

Q. Is that one address or several [1526] addresses? A. No, three addresses.

Q. Three different locations? A. Yes.

Q. At approximately what times, periods, did you live at those three locations, if you recall?

(Testimony of Thomas Richard Brooks.)

A. I moved in April, 1949, to 1032 Valencia; in June, 1950, I moved to 215 North Madison; in December, 1950, I moved to 1016 Valencia; May the 1st, 1950, I moved—1951, I correct that—May the 1st, 1951, I moved to my present address.

Q. Mr. Brooks, I show you Plaintiff's Exhibit No. 18 and ask you if you have seen this before?

A. Yes.

Q. And what is that?

A. That is a statement that I signed that I made to the group of doctors on October the 11th, 1950.

Q. Do you know who prepared the copy which you signed?

A. The copy was presented to me in that form and I signed it after correcting.

Q. This is your signature here?

A. That is my signature.

Q. Now, I notice in the transcript the usual statement here for such statements on Page 8, Line 24, Miss Curts can go over her notes and you go over it very carefully and make any changes and she will fix it for you, and then I [1527] understand you to say that you made some changes on this?

A. There are several ink notations in there which are of my handwriting.

Q. Would you please point those out to us just so we will have the record clear?

A. That one is not mine (indicating).

Q. That is, the change on the first page?

A. On the personnel who was present, changed

(Testimony of Thomas Richard Brooks.)

as Dr. I. C. Bohlman. Doctor—I don't know what that is supposed to be.

Q. I don't, either.

The Court: If that isn't, go on to the ones that are yours then.

A. Line 13, there was an extra letter attached to the "that" and I just simply inked it out.

On line 21, this is Page 3, the word in there in the first original typing was "h-a-d" and it should have been "h-a-n-d."

The same alteration "h-a-d" to "h-a-n-d" is in line 12, on page 4.

On line 25 there is a word there with four letters which I crossed out. I couldn't make sense of it and I added in my own handwriting "cantankerous."

And there is on line 14 on Page 6, there was a figure before the "7" and I crossed that out because it [1528] was inaccurate.

And then there is a phrase here that I cannot understand because I have inked it out. That is on line 25, page 7.

On line 27, the word "doctor" is followed in the typed by the word "w-h-o-m" and I added in there in my own handwriting "w-i-t-h," "The doctor with whom I consulted," it reads.

And in line 28, you will find in my own handwriting the word "it," "i-t." "I did report it to him."

Q. Do I see a slight change up here in 12, also?

A. Oh, in 12?

A. Right here and up above, also?

(Testimony of Thomas Richard Brooks.)

A. I crossed that out.

Q. Yes.

A. In line 6, between the words "treatment" and "hand," I have added the word "to."

And on line 12, at the end there is a word there that was in error and I crossed it out. I didn't do that (indicating).

Q. Didn't put the circle around the 20 there?

A. No. That is all the alterations that I have on that. Yes, that is correct.

Q. Thank you, Mr. Brooks. And that is all the alterations that you made? [1529] A. Yes.

Q. Mr. Brooks, when did your wife first begin to display any symptoms of the disease which she went to Dr. Robinson for treatment of, if you recall? A. I don't understand your question.

Q. Well, your wife went to Dr. Robinson for treatment and the testimony so far indicates that she had a slight paralysis or a paralysis in one leg and possibly in one hand and she walked with a cane, and I wondered when you first observed that she had any difficulties along those lines?

A. Dr. Robinson was not the first doctor that attended my wife.

Q. Well, that is not exactly what I asked you. I asked you when you first observed them, if you remember? A. Back in 1948.

Q. And where was that?

A. That was when we was living in Umatilla.

Q. How did you first observe the onset of this malady?

(Testimony of Thomas Richard Brooks.)

A. Well, it appeared that some injury had been done to her left hip which caused her to have a drop in her left foot, the result of falling on the ice outside an apartment on East Poplar in the early days of January, 1948.

Q. And then she went to a doctor, did [1530] she? A. She went to Dr. Campbell.

Q. Oh, she came up here to Walla Walla and saw Dr. Campbell?

A. Yes, we were living here at that time in January, 1948.

Q. Did she have any treatment shortly after her fall?

A. No; it wasn't apparent until about the—I think it was somewhere in the region of May.

Q. When did she have the fall on the ice, if you recall?

A. January, in the early days, somewhere around the 3rd or 4th of January.

Q. And then she went to Dr. Campbell after she came up here? A. Yes.

Q. How long did she go to Dr. Campbell?

A. She went to Dr. Campbell, as far as I can remember, two or three times.

Q. Do you remember the treatments that he administered to her? A. No.

Q. Were there other members of your family, Mr. Brooks, who went to Dr. Campbell for doctoring?

A. Yes; I think my youngest daughter went to

(Testimony of Thomas Richard Brooks.)

him back in 1946, soon after she arrived in this country.

Q. And her name was?

A. Her name is Mrs. William Emilio Lepiane. Her name is [1531] known as Audrey Lepiane.

Q. And were there any other members of the family that went there?

A. Not up to 1948, no.

Q. Well, I mean between the time that went to Dr. Campbell?

A. I, personally, went to Dr. Campbell for a cold.

Q. That is, you went to Dr. Campbell for a cold?

A. Yes, in December of 1947.

Q. And any other members of your family treated by him?

A. I don't know of any others than my youngest daughter, my wife, and myself.

Q. By the way, could you give us a summary of the members of your family?

A. Well, I have three daughters. The eldest one is Enid, E-n-i-d. She is divorced and her name is now back by deed to Brooks. She is known as Enid Brooks and lives with me. My second daughter is Joyce Edwards, wife of Noel Burton Edwards, living at 1254 Bell Street, Walla Walla. My youngest daughter is Mrs. W. E. Lepiane, known as Audrey Lepiane, living at 1327 Olive Street, Walla Walla.

My eldest daughter has no family; my second daughter, Mr. and Mrs. Edwards, my son-in-law, have one daughter, known as Noeline, N-o-e-l-i-n-e;

(Testimony of Thomas Richard Brooks.)

my youngest daughter has three children, Susan, the eldest; Alicia [1532] Jane, and the youngest, Judith Ann. And that is all of my immediate family.

Q. Mr. Brooks, to what doctors had you personally been during the year before, say, August of 1950, if you recall?

A. I hadn't been to any doctor.

Q. You had not been to any doctor?

A. Other than to Dr. Robinson in March, early March, to have a blood test, which was taken by his nurse, and on May the 2nd to have a blood test taken by himself.

Q. Had you been to any other doctors for illnesses other than the cold you testified to?

A. I just omitted to remember that on January the 22, 1950, I fell on the ice and broke my left wrist and went to Dr. Wallace Pratt.

Q. Oh, yes. So that you went to Dr. Wallace Pratt in January, 1950?

A. Yes, for the fracture.

Q. Do you remember the date?

A. January the 22nd.

Q. And how did you happen to go to Dr. Pratt?

A. I went up in the elevator in the Drumheller Building ostensibly to go to Dr. Campbell and, finding Dr. Campbell was not there, the nurse referred me to the next door doctor who was Dr. Wallace Pratt.

Q. Was Dr. Campbell just out for the day or something of [1533] that sort?

(Testimony of Thomas Richard Brooks.)

A. He was sick.

Q. He was sick?

The Court: When was that, in January, 1950?

A. '50.

Mr. Sembower: January, 1950.

The Court: All right.

Q. (By Mr. Sembower): How often did you go back to see Dr. Pratt with your broken wrist?

A. Well, he rushed me off to the hospital and put it in a plaster cast, set it, and I stayed in the hospital for a few hours, then I went home. And I think it was about ten days or a week, I think I made practically four or five visits to him and then eventually one to the hospital to have the cast removed and a couple of times after. I can't give you the exact number truthfully, because I have—only give them approximately.

Q. In your visits to Dr. Pratt's office, did you meet any other doctors there?

A. Not that I have any knowledge of.

Q. Mr. Brooks, when did you first learn that you might have syphilis?

A. (No response.)

Q. When did you first learn that you might have syphilis? A. I might have? [1534]

Q. Yes. A. I don't understand.

Q. Well, when did you first learn that you did have syphilis?

A. I don't still understand the question.

Q. Well, did you learn at any time that you had syphilis?

(Testimony of Thomas Richard Brooks.)

A. I was informed that the first blood test taken in Dr. Robinson's office by Mrs. Andrew, his nurse, had come back positively showing syphilis present in the blood.

Q. When were you informed about that?

A. About, I should think, somewhere in the region of St. Patrick's Day.

Q. How were you informed of it?

A. I was informed by my wife, who had been to see Dr. Robinson.

Q. Then did you do anything about that?

A. No, I didn't believe it, and I don't believe it now.

Q. You don't believe that you had syphilis at that time? A. No.

Q. On what do you base that belief?

A. I have led too much of an active life to have had anything like a medical difficulty of that kind that wouldn't have done me some injury

Q. Did you have syphilis, Mr. Brooks, when you came into the country? I am merely asking you because I believe [1535] they take a routine test, do they not?

A. I passed through the ordinary routine test in March 31, 1947, through the American Consulate in Grovenors Square, London, and I passed through the normal test at the entrance into New York on July the 15th, 1947, and nobody on those occasions ever informed me I had anything wrong with me. I was given a clean bill of health.

(Testimony of Thomas Richard Brooks.)

Q. Do you recall whether any blood tests were taken of you on those occasions?

A. They were.

Q. And you received no reports on those occasions showing that you ever had any infection of any kind? A. None whatever.

Q. Now, those are the tests to which you referred when you told Dr. Robinson that you had had negative tests when you came into the country, is that correct?

A. I don't ever remember referring to any particular tests to Dr. Robinson. I told him I had had several tests during my life and I had never yet had anything of what he told me I had got. That is the best of my knowledge.

Q. And you told him that in one of the conversations there on that week end, is that correct?

A. No, months before that.

Q. Do you remember telling him that on that week end?

A. I repeated part of that, but not all [1536] of it.

Q. But you did say to him words to that effect that week end?

A. Now, I want to know what conversation you are referring to?

Q. Well, was there any conversation that week end in which you said that to him?

Mr. Rosling: What week end, counsel?

Mr. Sembower: That is the week end of October the 8th and 9th.

(Testimony of Thomas Richard Brooks.)

A. October the 8th was on a Sunday and October 9th was on the Monday. Dr. Robinson phoned me on October the 7th.

Q. Yes. Well, now, in your conversations with him on the 7th and 8th——

A. When he said——

Q. Now, wait a minute. Did you, in those conversations, inform him that you had had a negative test when you came into the country?

A. I told him this, and you will find it in that statement, that I had a negative test coming into the country.

Q. That is the conversation?

A. That was the conversation.

Q. All right, now, Mr. Brooks, you have told about, I believe, the first blood test, is that correct, that was taken of you? Did you go into his office again?

A. When was this first blood test supposed to be taken? [1537]

Q. Well, that I don't know, I am asking you.

A. Well, which test are you referring to?

Q. Do you recall when the conversation was you have just testified to where your wife told you that the result was positive?

A. You are referring to the one in March, 1950?

Q. That's right, thank you.

A. That is correct. Can I answer that one?

Q. Well, I don't know what the answer is. Were you informed——

A. That was the one I had, yes.

(Testimony of Thomas Richard Brooks.)

Q. Now, were you informed of another test that had been taken before or after, or were you informed of another test?

A. I had another test taken by Dr. Robinson himself on May the 2nd, 1950.

Q. All right, and were you informed of the results of that? A. Only by my wife.

Q. And what was the information you got as to that?

A. Again it had come back positive, the doctor had informed her.

Q. And did you do anything after that?

A. Nothing whatever, because I still repeated I didn't believe it.

Q. And the basis on which you didn't believe it is the same [1538] as you said before?

A. Perfectly.

Q. Well, now, Mr. Brooks, you testified in one of your depositions that at some time in the past you had been, I think, associated with a military company or something where there had been——

A. I had been the camp sergeant major or warrant officer in charge of a field punishment camp in the first World War in which we had many personnel under my control and my jurisdiction who were suffering from this disease and other venereal diseases, and, while I am not a doctor or a medical man, I had certain instructions as to certain actions to see and make certain that were taken by those suffering from it that I did. I did not know what had to be done.

(Testimony of Thomas Richard Brooks.)

Q. Mr. Brooks, do you still believe that you never had it?

A. Not in the way put out by Dr. Robinson, yes.

Q. Well, all right, but your answer doesn't quite answer it. You say not in the way that he put it; well, in what way, then?

A. I was informed by another doctor, who took a test from me on October the 9th, 1950, that there was a slight presence in the blood.

Q. Yes, and who was that?

A. That was Dr. Peter Brooks. [1539]

Q. And that was on October the 9th?

A. October the 9th.

Q. And what—— A. 1950.

Q. And what did you do after that?

A. When he informed me, I asked him, well, what could we do about it, and he suggested certain treatments and I took those treatments.

Q. And what was the result, if you know?

A. The result was he took a spinal test and it was negative.

Q. You had a positive before that?

A. The test was a spinal that he took.

Q. And it turned out positive?

A. Slightly, yes.

Q. And then you took the treatments and it turned out negative? A. Yes.

Q. Why did you go to Dr. Peter Brooks on the 9th of October? A. Because I wanted to.

Q. Was there anything caused you to want to?

A. Yes.

(Testimony of Thomas Richard Brooks.)

Q. What was that?

A. I just wanted to, because with the statement that the threat I had had heaved at me——

Q. Now, wait a minute, I am asking [1540] you——

A. Well, you are asking me and I am telling you.

Q. Because of these discussions that you had with Dr. Robinson, you went and had the test, is that correct?

A. Because of the threat made to me by Dr. Robinson in the telephone conversation when he called——

Q. I asked you——

A. Wait a minute——

Mr. Sembower: That is not properly responsive, I ask that that be stricken.

The Court: Well, I am not sure. You asked him why he went. Shouldn't he have the right to tell you why, then? Is that what you are doing?

A. That is, yes.

The Court: Why you went?

A. Yes, it is purely the truth.

The Court: Well, because of the threats made. All right, go ahead.

Q. (By Mr. Sembower): Of course, the threats are your own word, is that not correct?

A. I am repeating the word "threat" was used by me when the doctor said this.

Q. Yes.

A. You asked me about the threat.

(Testimony of Thomas Richard Brooks.)

Q. Wait. I haven't asked you about the threat.

The Court: No. It is his conclusion, I appreciate [1541] that.

Q. (By Mr. Sembower): Mr. Brooks, is it not a fact you had both a positive blood and positive spinal in your tests with Dr. Brooks?

A. I think he took three tests, I can't quite remember. If the doctor said I had three tests, then the doctor is right.

Q. Now, Mr. Brooks, did you resent the knowledge that you had received that you had a positive test?

A. I certainly didn't feel happy about it. I certainly did not feel very happy about it.

Q. Were you angry about it?

A. No; I certainly didn't feel happy.

Q. Now, actually, Mr. Brooks, when you went in to have your tests in Dr. Robinson's office, you were not very happy about it then, were you?

A. Well, are you using them singular or plural?

Q. Well, we will take the first one, then. You were not very happy about that, were you?

A. I was quite happy about that, because the lady that took it was a personal friend of our family, Mrs. Andrew, and still is.

Q. You mean the nurse who was there?

A. The nurse there, Mrs. Floyd Andrew.

Q. And when did you first get to know Mrs. Floyd Andrew; is [1542] that it?

A. Yes. Around December, 1947, in the church at St. Paul's Episcopal here.

(Testimony of Thomas Richard Brooks.)

Q. So you weren't angry with her?

A. I wasn't a bit angry.

Q. Well, now, the second time you went in, were you angry then?

A. I was not angry with anybody else except the doc, who had kept me waiting 40 minutes.

Q. You were angry with him for keeping you waiting 40 minutes?

A. Yes, and so would you be, I guess.

Q. Mr. Brooks, did you tell Dr. Robinson in one of the conversations on either the 7th or 8th of October, 1950, that he had used your wife as a guinea pig?

A. I did.

Q. That was your belief?

A. That was my conviction.

Q. How long had you entertained that conviction?

A. About six months.

Q. And what was the basis of that conviction?

A. Because I got tired of seeing her having a needle pushed into her about every four hours for 120 shots.

Q. Do you know what the needle was for?

A. Penicillin, I was told. [1543]

Q. Who was pushing the needle into her?

A. My daughter Enid, on the instructions of Dr. Robinson.

Q. That is, Dr. Robinson had instructed your daughter how to administer the medicine, hadn't he?

A. He came and showed her, yes.

Q. Well, Mr. Brooks, wasn't that actually an

(Testimony of Thomas Richard Brooks.)

outstanding economy for your family to be able to administer that yourselves?

A. I wasn't made aware of it in that way.

Q. As a matter of fact, the bill for the injections done by your daughter was about \$75.00, as compared to what it would have been at about \$500.00, was not that true?

A. I never had it pointed out to me that way and I did not understand it so.

Q. There is a possibility that that is true, isn't it?

A. I haven't got into the cost of having it done in the doctor's office as compared to being done at home. I have never had it explained to me.

Q. Now, when did you first begin to feel that your wife was being used as a guinea pig?

Q. When did I what?

Q. You said that you began to feel about six months before this October, is that correct?

A. Yes.

Q. Did you resent that? [1544]

A. I didn't like to see her—she was—the thing was this, that my wife was very low in physical stamina, caused by the various things that she was having treated, being treated with, for instance, drugs that were being given by treatment, and with all these penicillin shots, and when you love a person and live to know and respect them, you can't stand idly by and coldly accept what they are having done to them as being good when you see them

(Testimony of Thomas Richard Brooks.)

suffering worse after they have had it than they were before.

I ask you, as a human being, that was a little bit beyond even the hard head that I might be myself. I couldn't stand it. And that is why I objected to her being experimented with.

Q. Now——

A. Because on one occasion——

Q. Now, as a matter of fact, Mr. Brooks, you don't have much use for doctors generally, do you?

A. I don't know what you base that question on. I can't answer it.

Q. Well, is it true? A. It isn't.

Q. How do you hold doctors, in esteem?

A. I do.

Q. Well, now, Mr. Brooks, what doctors have you had contact [1545] with in this community?

A. I have had contact with I couldn't tell you the number.

Q. Well, a large number? A. Yes.

Q. Well, now, on what occasions have you had contact with these doctors?

A. Social and many other ways.

Q. All right. Now, describe to us some of the occasions when you have had contact with these doctors socially.

A. Well, you go to a Chamber of Commerce meeting, you meet them; you go to a Lyons Club meeting, you meet them; you go to church, you meet them; you go to a ball game, you see them.

(Testimony of Thomas Richard Brooks.)

Q. Well, now, what doctors have you met at the Chamber of Commerce?

A. I couldn't give you that, not truthfully. I have met quite a few. I couldn't itemize each doctor by name.

Q. What other social occasions have you met doctors?

A. I met them at Masonic and fraternal organizations.

Q. How long have you met them at the Masonic and fraternal organizations?

A. About six years.

Q. What Masonic Lodge do you belong to?

A. I belong to the Blue Mountain Lodge No. 13.

Q. And you know the membership there pretty well, do you [1546] not?

A. Fairly well, yes.

Q. Well, now, what doctors in this community belong to that lodge?

A. I would rather not answer that. Do I have to answer that, sir?

The Court: Well, I think so, yes, you should answer that.

A. There are several. I can't name them all.

Q. Well, name the ones that come to mind.

A. Oh, there is the dentist, Dr. Wood—

Q. I mean, who are they, Mr. Brooks?

A. I know Dr. Wood, Dr. Sam Page. I know quite a few but just at this moment I can't think of their names.

(Testimony of Thomas Richard Brooks.)

Q. Well, now, you mentioned you knew some doctors in the lodge? A. I do know some.

Q. Well, now, you surely remember the names of some others?

A. I don't say all of them are in the Masonic Lodge.

Q. Well, now, what is another organization?

A. In church.

Q. All right, now, what churches do you attend?

A. I have been attending the Episcopal Church, St. Paul's, and I have attended the Methodist, I have attended the Baptist. [1547]

Q. Well, now, in your attendance on those churches, what doctors have you gotten to know there? Did you have much opportunity to get to know doctors there? After all, just before and after service, wasn't it?

A. Well, I just know that they are doctors, but I don't have a conversation with them every time I go.

Q. But have you ever actually met any doctors in those churches? A. Yes.

Q. Well, who have you met there?

A. I have met Dr. Bob Jamieson, Dr. Beck, and Dr. Balcom Moore.

Q. Where did you meet Dr. Balcom Moore?

A. I met them all in church.

Q. Well, any other places besides churches that you met these doctors?

A. Well, I met them in the Chamber of Com-

(Testimony of Thomas Richard Brooks.)

merce when I have been there.

Q. And who did you meet again at the Chamber of Commerce?

A. Well, some of the same doctors, as well as I have already named.

Q. Can you think of any other names?

A. I could if I had a list, yes, I could tell you, but I can't just name them off.

Q. Well, let's see. I have physicians and surgeons here; just [1549] go down the list and see if you have met any of these doctors now.

What about Dr. Beaver?

A. Yes, I know Dr. Beaver. He attended my daughter.

Q. When did he attend your daughter?

A. Oh, back in 1950, '49, '48.

Q. Which daughter was that?

A. My youngest daughter.

The Court: What was that name?

Mr. Sembower: Beaver.

The Court: Beaver?

A. Yes.

Mr. Sembower: Beaver, B-e-a-v-e-r.

The Court: Oh, all right.

Q. (By Mr. Sembower): Dr. Bohlman?

A. I have met him twice.

Q. Where did you meet him?

A. At this here inquiry.

Q. That is, in connection with the hearing?

(Testimony of Thomas Richard Brooks.)

A. Well, I had met him.

Q. And, of course, Dr. Peter Brooks, you met him for treatment? A. Yes.

Q. Had you met him before you went to him for treatment? A. No. [1550]

Q. And Dr. Robert A. Campbell?

A. I have met him once when talking to him about PTA work.

Q. Now, Dr. Leroy O. Carlson?

A. I don't remember ever having had any conversation at all with him except when he was in this thing.

Q. Dr. Cowan? A. Dr. Cowan?

Q. Harry C. Cowan?

A. Harry C. Cowan, I happened to go and see him once on busines.

Q. What did that business involve?

A. That involved insurance inquiries.

Q. Were you at that time employed in the insurance business?

A. I was employed as an investigator.

Q. Of what did that work consist?

A. Well, making reports on claims and applications for insurance.

Q. What insurance company were you working for? A. That is supposed to be confidential.

Q. Well, did it deal with the medical bureau in any way? A. It did not.

Q. Well, now, in connection with that type of work, why did you go to see doctors?

(Testimony of Thomas Richard Brooks.)

A. Who?

Q. In connection with that type of work, why did you go to [1551] see doctors?

A. Well, in the case of a person claiming insurance, like making an application for a \$25,000.00 coverage, they sent out an inquiry sheet to an investigator, that is me, and I am supposed to find out all about the background of the applicant. And when a man has had medical attendance for this or that and he, for instance, now——

The Court: Is that in connection with life insurance investigation? A. Yes.

The Court: It is quite obvious what the connection would be.

Mr. Sembower: Yes.

Q. Dr. Walter—I think I asked you about Harry C. Cowan? A. Harry Cowan, yes.

Q. What about Dr. Walter C. Cowan, did you meet him? A. I met him once.

Q. Where did you meet him?

A. In his office.

Q. Was that in connection with treatment?

A. In business.

Q. This same business you have been relating?

A. Yes. Dr. John R. Cranor?

A. I met John R. Cranor when I met—I used to go to the penitentiary quite regularly and one of the functions [1552] up there I met John Cranor, Sr., and I was introduced to John Cranor, Jr.

Q. They are both doctors?

(Testimony of Thomas Richard Brooks.)

A. No, John Cranor, Sr., was the warden at the penitentiary.

Q. Oh, I see, and this is John Cranor, Jr.?

A. Who was his son.

Q. What about Dr. A. W. Ely?

A. Never met him.

Q. What about Dr. George A. Falkner?

A. I met him once on business.

Q. On business. This same business you have been mentioning? A. Yes.

Q. Dr. C. R. Garrett?

A. C. R. Garrett is dead.

Q. Dr. Elmer Hill? A. He is dead.

Q. Dr. Herman Hindin?

A. Never met him.

Q. Dr. Hogenson?

A. Never met him. Hogenson or Hoganson?

Q. It is H-o-g-e-n-s-o-n.

A. Hogenson. I met him twice.

Q. Where did you meet him?

A. In his office. [1553]

Q. In connection with business? A. Yes.

Q. W. F. Holmes? A. Also the same.

Q. Dr. Miles Hopkins?

A. I don't remember having met him.

Q. Dr. C. J. Johannesson?

A. I met him several times.

Q. Where did you meet him?

(Testimony of Thomas Richard Brooks.)

A. Having X-rays done on myself and also on business.

Q. Dr. Harlan P. Kahler?

A. Do you mind—

Q. K-a-h-l-e-r? A. Never met him.

Q. Dr. Ralph S. Keyes?

A. I met him several times, both Chamber of Commerce, and that is another function I can't quite remember. I know it was somewhere else.

Q. Dr. Alvin R. Kincaid?

A. Never met him.

Q. Dr. E. O. King?

A. Yes, he attended my second daughter and her husband and I have been present when he has attended them.

Q. Dr. A. E. Lange?

A. I have met him at the inquiry here. [1554]

Q. On any other occasions? A. No.

Q. Did he belong to any of these clubs you belong to?

A. He does, but I can't quite remember which one it is.

Q. Some club, however. All right, what about Dr. John C. Lyman?

A. I have met him twice.

Q. And you testified about Dr. Balcom Moore. Dr. Sam Page. Dr. C. Don Platner?

A. Yes, I met him.

Q. Where did you meet him?

A. I met him when I went to see him about an

(Testimony of Thomas Richard Brooks.)

accident in which a fellow had had a fracture. That was on business.

Q. Dr. John E. Potts?

A. I don't remember having had a conversation with him other than on the phone.

Q. You went to see Dr. Pratt, of course, in January. Did you meet him on any other occasions?

A. I met him several times around the street and I also met him at his home seeing that I sold him two pieces of domestic appliances.

Q. When was that sale made?

A. About 1949.

Q. What was the appliance? [1555]

A. I believe one was a washer and the other was a range.

Q. Dr. F. L. Ralston?

A. I seem to remember I have met him, but I can't just recollect.

Q. Is it possible that he is one of the clubs or churches? A. Well, somewhere around.

Q. Well, you met Dr. Robinson, no question about that. Dr. J. T. Rooks? A. Spell that.

Q. Have you met him?

A. Spell that, would you?

Q. R-o-o-k-s?

A. He lives in College Place. I can't say that I have met him other than spoke to him on the telephone.

Q. Did you discuss this case with him?

(Testimony of Thomas Richard Brooks.)

A. No, sir.

Q. Dr. Merrill Smeltzer? A. Yes.

Q. In what connection have you met him?

A. I met him in St. Mary's Hospital when he took a spinal of my wife, 1948.

Q. Was she at that time going to see him?

A. She went to see him, yes.

Q. And how long did she continue making calls on his office?

A. I couldn't tell you. It was several [1556] months.

Q. Was that before or after the fall on the ice?

A. That was the year of the fall.

Q. When was this spinal taken, if you recall?

A. It was taken, I should think, somewhere in the region of the latter end of August or early September.

Q. And then she had the fall that winter?

A. She had the fall the January before.

Q. Oh, the January before. Dr. R. W. Smith?

A. Don't know him.

Q. Dr. Ralph W. Stevens?

A. I met him, yes.

Q. Where have you met Dr. Stevens?

A. In the Chamber of Commerce.

Q. In any other organizations?

A. Not that I can remember.

Q. Dr. Morton W. Tompkins?

A. I met him also on business.

Q. In what connection, with what business?

(Testimony of Thomas Richard Brooks.)

A. The same, insurance.

Q. Met him on a number of occasions?

A. Oh, I had several cases I had to go and get certain information so I could complete reports.

Q. When did those cases occur?

A. Oh, anywhere in the region from 1948, latter end of '48, to the beginning of '52. [1557]

Q. And Arthur A. Yengling?

A. Yes, he operated on me in August, 1951.

Q. What was that operation for?

A. Arising out of an accident in which I had been knocked down by an automobile.

Q. Well, now, Mr. Brooks, I believe it was on October the 9th, was it not, that you called Mr. Fullerton?

A. That's right.

Q. Did you know he was not a doctor?

A. I did.

Q. Had you ever met Mr. Fullerton on any other occasion?

A. Never met him at all.

Q. How did you know of his existence?

A. Well, having heard so much in the previous three or four days about this letter of September the 30th and the demands made on me by Dr. Robinson—

Q. Well, no, Mr. Brooks—

A. Wait a minute, that letter was signed by Mr. Fullerton.

Q. Oh, was that why you went to see him?

A. I wanted to know the signator of it.

(Testimony of Thomas Richard Brooks.)

Q. The signator?

A. Was Mr. Fullerton.

Q. About what time of day on October the 9th, Mr. Brooks, did you call Fullerton?

A. I can give you the exact. [1558]

Q. All right, what is it? A. Around 8:30.

Q. Why do you remember it so exactly?

A. Because I was definitely anxious to get in touch with him.

Q. And you felt that 8:30 was the best time to get in touch with him?

A. Well, I wanted him to get up in the morning and be up when I called him and I wanted him to be available.

Q. Where did you call him, at his office?

A. I called him at his home.

Q. Why did you call him at his home instead of his office?

A. Because I had to be at a business appointment around ten to 9:00 and I wanted to call before.

Q. Well, how long a conversation did you have with Mr. Fullerton?

A. I should say roughly around about ten or twelve minutes, not more.

Q. In that conversation with Mr. Fullerton, did you mention the word "syphilis"?

A. I don't recall.

Q. What did you do after you talked with Mr. Fullerton? A. I went to work.

Q. Well, then, what did you do after that?

(Testimony of Thomas Richard Brooks.)

A. After I got to work, I called up Dr. Brooks' office when [1559] it opened at 9:00 and asked for an appointment with the doctor.

Q. Now, how did you happen to go to Dr. Brooks?

A. Well, because he is the same name as me and he belonged to the same office that my daughter had had attention from from Dr. Beaver. That is why.

Q. Oh, was that the reason why or because he had the same name as you?

A. Well, partly that, too.

Q. Because he had the same name?

A. Yes.

Q. And then when did you have an appointment with Dr. Brooks? A. 10:30 that morning.

Q. Now, was your wife at home at that time?

A. My wife was in Spokane.

Q. When had she gone to Spokane?

A. The evening before.

Q. Did you tell Dr. Brooks that she was in Spokane?

A. I didn't tell him as soon as I got there, no.

Q. Well, but did you tell him?

A. I told him during the time I was there, yes.

Q. And did Dr. Brooks recommend then that she see a physician in Spokane?

A. No, not right like that. [1560]

Q. Well, how did he say it?

A. Well, I was talking to him about my wife's

(Testimony of Thomas Richard Brooks.)

condition and I said I was greatly concerned and she was in Spokane, I felt it would be a good opportunity to find out, if I could, the method in which or where I could get some expert advice.

Q. And what did he say to that?

A. He said, well, he had a friend who was a doctor of nervous diseases and disorders in Spokane, and I said, "That's fine, my wife is up there at this time."

Q. And who was that? A. Dr. Lewis.

Q. And what did Dr. Brooks do, call Dr. Lewis?

A. No, Dr. Brooks said that he would write to Dr. Lewis and inform him that my daughter would be contacting him with a view of making an appointment for him to see my wife and examine her.

Q. Which daughter was that? A. Enid.

Q. Was she living in Spokane at the time?

A. She was living in Spokane, had been living there about three weeks.

Q. You don't have a copy of that letter, do you?

A. Not of Dr. Brooks' letter, no. I understood——

Q. I thought he might have sent you a copy along with the [1561] letter he sent.

A. I never asked for it.

Q. Now, did you discuss with Dr. Peter Brooks the grievance which you thought you had against Dr. Robinson? A. I don't think so.

Q. Did you say anything to him about it?

A. I don't remember.

(Testimony of Thomas Richard Brooks.)

Q. You don't remember whether you discussed this with him or not?

A. Not to the extent of making particular reference to it.

Q. Well, did you make any oblique or incidental reference to it?

A. I made reference that I had been threatened by a doctor and I had been thinking very seriously about approaching the medical society.

Q. Did you tell Dr. Brooks why you had decided to come to see him?

A. No, I didn't. I didn't say, "Because you got the same name as me or that you are associated with Dr. Beaver" in as many words, no.

Q. Is there any reason, Mr. Brooks, why you don't remember this as clearly as the moment you called Mr. Fullerton?

A. Because I don't think I did discuss it with him, that is why.

Q. But you aren't sure you didn't? [1562]

A. Well, when you ask me in the way you do, I'm not sure.

Q. Now, Mr. Brooks, at the time that you called Mr. Fullerton, did you know that your daughter had gone in to see him some time before in connection with that episode of your granddaughter swallowing something? A. I did.

Q. When did you first learn about her doing that?

A. When? On October the 5th, I had a general

(Testimony of Thomas Richard Brooks.)

reference to it in conversation, but I had never had or never troubled to get any detail because the child had appeared all right and I hadn't had any occasion.

Q. Now, do you remember about the time when the child swallowed the substance?

A. I don't because I was not informed until some days after, as far as I can remember.

Q. The child was actually in your home at the time, wasn't it?

A. That is what I learned, yes.

Q. Who was staying with the child?

A. Who was staying—

Q. Who was staying with the child in your home?

A. The thing was we were moving from 1032 Valencia to 215 Madison and the things were all packed up out in the medicine chest and these boxes of Ex-Lax was in the bath on the floor ready to be loaded up in the pickup, and [1563] it was there that the child, I understand, got hold of them.

Q. Well, now, you weren't actually there, were you? A. I wasn't there.

Q. Were they your Ex-Lax pills?

A. They were, they belonged to the family.

Q. Who told you about the incident?

A. I couldn't quite tell you exactly who did. I can't pin point the exact person. I think my wife mentioned it to me quite casually.

(Testimony of Thomas Richard Brooks.)

Q. When did it happen, to the best of your knowledge, what time of day?

A. I have no recollection until I heard it given here in the statement by yourself; that is, it was in June.

Q. Was your daughter employed somewhere at that time? A. Which daughter?

Q. The one who was the mother of the child?

A. Mrs. Edwards?

Q. Mrs. Edwards. A. Yes.

Q. And where was she working, if you recall?

A. She was working for a doctor, for Dr. Ralph Smethurst, as a dentist's nurse and receptionist.

Q. Do you know her hours of employment?

A. I think she went to work at 8:30 and was through at 5:00, [1564] with a break of 12:00 to 1:00 for lunch.

Q. To your knowledge, was this incident when she came home? A. I couldn't tell you.

Q. Where were you working at the time?

A. I was working for A. M. Jenson, now known as the Bon Marche.

Q. What were your hours of employment?

A. All hours that God sent and could give.

Q. What was that?

A. All hours that God sent and anything that I could get.

Q. I don't quite understand that?

A. Well, it means to say that I would be out

(Testimony of Thomas Richard Brooks.)

some nights until 11:00 or 12:00 o'clock and I would be out some mornings as early as 6:00, whenever I could get business. I was a salesman.

Q. On this particular day, do you remember when you got home? A. I don't.

Q. Had your daughter discussed with you the matter of filing this grievance of hers about the dollar and a half?

A. To the best of my knowledge, she never discussed it with me as a set subject.

Q. But she did discuss it with you, incidentally?

A. She may have made reference to it.

Q. Now, it happened in June, and did she ever express to [1565] you her concern about the amount of the bill?

A. Well, during the talk about this letter, yes.

Q. Well, had she mentioned it to you before that?

A. I don't think she had ever mentioned it much except that it was a charge the doctor had sent her for a bill. She may have mentioned the amount, I do not remember, because I am so vague on what was actually said, when the conversation was, but it was in general conversation and I didn't have any knowledge that it was a serious matter and I paid no particular attention at that time.

Q. Do you remember about when she did make that statement to you about the bill?

A. I know she made a definite statement to me on October the 5th after Dr. Robinson had been out to our house.

(Testimony of Thomas Richard Brooks.)

Q. What about prior to that?

A. No; other than in general conversation.

Q. Well, what general conversation?

A. I don't—it was just general conversation. It had been referred to before or briefly mentioned. I didn't know too much about it and I never even—I didn't know sufficient about it to especially be interested.

Q. Did she mention it to you shortly after the incident occurred?

A. Not to the best of my knowledge.

Q. Did she mention it to you about the 1st of July? [1566]

A. I do not think so because that was too close on the date given to be that it was mentioned. It was along later than that.

Q. Mr. Brooks, were you concerned over the possibility that maybe you had communicated this disease to your wife? A. No, sir.

Q. You said a little while ago you were annoyed and concerned. What did annoy you or concern you about it? A. What?

Q. What did annoy you or concern you about these things?

A. Because I felt so positive in my own mind that I hadn't.

Q. Now, Mr. Brooks, you talked with Mr. Fullerton at the Medical Service office, is that correct?

A. When?

(Testimony of Thomas Richard Brooks.)

Q. On the morning of October the 9th, around about 8:30? A. No, sir.

Q. I thought you testified to that. Have I got the wrong date?

The Court: He said he called him at his home.

Mr. Sembower: Oh, I'm sorry.

Q. You talked to him at his home?

A. I called him at his home telephone. I take it that was his home.

Q. And what did you do then after that with reference to [1567] the complaint?

A. I did nothing.

Q. What did Mr. Fullerton tell you?

A. He told me he would consult with the power that would be, as it were, and let me know.

Q. Did he refer to who those powers that be were? A. No.

Q. If you know, why didn't he ask you to come in the way your daughter did?

A. I can't answer that.

Q. Well, then, when did he get in touch with you again? A. About 12:30 on the 10th.

Q. Had you in the meanwhile made any telephone calls to him?

A. None whatever, other than that first one.

Q. And then on the 10th, when did he get in touch with you? A. About 12:30.

Q. And how did he get in touch with you?

A. In person.

Q. Where were you at the time?

(Testimony of Thomas Richard Brooks.)

A. I was in the basement of A. M. Jenson's Store.

Q. Was there anyone else present?

A. Not actually present. They were in the other part of the building, yes.

Q. Did anyone accompany Mr. Fullerton to see you? [1568] A. No.

Q. Well, what did he say to you on that occasion and what did you say to him?

A. He said—he introduced himself, because up to that moment I had never seen Mr. Fullerton in the flesh, to the best of my knowledge. Introduced himself, he said he had talked with his president, Dr. Page, and they would be glad to hear me, what I had to say, if I would be at their office in the Drumheller Building at 5:30 on October the 11th, and I said, "I will be there."

Q. Did he say anything about your bringing any people along or anything of that sort?

A. No. I said, "I would like to have a stenographer to take the notes down verbatim."

Q. And what did he say?

A. He said, "Well, perhaps we can fix that."

Q. Did he on that occasion ask you to write out any complaint? A. He did not.

Q. Did you ask him who would be present?

A. No, I did not.

Q. Did he make any explanation of why he was calling together a group of people? A. No.

(Testimony of Thomas Richard Brooks.)

Q. Did he describe them as officers or [1569] trustees?

A. No, he said there would be several there.

The Court: Was that to be at Dr. Page's office?

A. No, that was the office of the medical society.

The Court: Oh, the medical society.

A. In the Drumheller Building.

The Court: Yes, all right.

Q. (By Mr. Sembower): Where did he say the meeting would be?

A. Would be in the offices of the medical society in the Drumheller Building. He gave me the room number. I can't give it to you now. I think it is 200 something.

Q. And then did you attend that meeting?

A. I attended there as requested.

Q. And who was present, if you recall?

A. The names as per that list, exhibit, you just showed me.

Q. Do you have any independent recollection of who was present?

A. I know that Dr. Page, Dr. Tompkins, Bohlman, Dr. Yengling, Dr. Lange, and, I believe, another one there, I can't quite remember his name. And Judd Kimball and Miss Curts, Mr. Fullerton.

Q. Well, you knew most of these men, didn't you?

A. I never knew any of them other than Mr. Fullerton.

Q. You testified a moment ago that you met them all?

(Testimony of Thomas Richard Brooks.)

A. Yes, but all since. I didn't know them at that time. [1570]

Q. You said you had been engaging in the insurance business since '48, did you not?

A. Yes, but I had never met all these.

Q. But you had met some of them, had you not?

A. I hadn't met those particular—I hadn't met them, not those particular doctors.

The Court: I didn't get that?

(The answer was read.)

Q. (By Mr. Sembower): Well, Mr. Brooks, is it not a fact that Dr. Robinson never had informed the members of your family that you had syphilis?

A. Yes, he had.

Q. Who had he informed?

A. Mr. Noel Edwards.

Q. Mr. Brooks, after you had the conversation with Dr. Robinson on Sunday morning, October the 8th, what did you do then?

A. Which conversation?

Q. Well, the first conversation. You called him back the second time; he called you the first time; isn't that correct?

A. He called me at about a quarter to 8:00.

Q. And then after that conversation, what did you do? A. I went to church.

Q. Then what did you do after that? [1571]

A. Came home and had breakfast and called my family.

(Testimony of Thomas Richard Brooks.)

Q. And when you called your family together, at that occasion you informed them of the diagnoses, is that not correct?

A. I informed them that Mom and I had had blood tests taken and what we had been informed was in them.

Q. Who all was present there, Mr. Brooks?

A. There was my eldest daughter and her husband—

Q. Who is that?

A. That was William Emerson at the time.

Q. And her husband, and who else?

A. My daughter Enid, my daughter Joyce and her husband, Noel Edwards, my youngest daughter Audrey, my wife. That's all.

Q. Mr. Brooks, reading from the transcript of the hearing before the Board of Trustees of the Walla Walla Valley Medical Society to investigate a complaint of Mr. Thomas R. Brooks against Dr. Miles H. Robinson, dated November 21, 1950, at 8 p.m., I find here on Page 29, line 24—I beg your pardon—Page 28—a statement of Dr. Robinson. He says:

“In the first place, it is perfectly true that I made a number of phone calls to members of the family. I went to the Edwards to talk to her about the letter. As to the exact [1572] number of phone calls and the exact time they were made, I think I called Mr. Brooks twice and he called me once. I remember calling Mr. Edwards once and stopping by his place of business once that I know of. As far as this

(Testimony of Thomas Richard Brooks.)

statement that I made any threats, I deny that absolutely. Mr. Brooks has stated, he implied I talked about nothing but this letter. I talked about the fact that I was going to have to give up his case.

“That is the primary reason that I made the telephone calls and caused me to give up the case, and because of giving up their case, I would have to do certain things, report it to the Department of Health and report it to Mr. and Mrs. Brooks and the other members of the family.

“I never told Mr. Edwards over the phone, or any other time, that his father-in-law or mother-in-law had syphilis, but I did say there is a ‘disease’—I think I used the word ‘virus’—in your father-in-law and mother-in-law which is serious and has a serious consequence to them, because your father-in-law was not taking treatment and [1573] it might be their children might have it.”

And Mr. Edwards said:

“I will concede to that statement of Dr. Robinson.”

And then you said:

“What was that?”

And then Mr. Edwards said:

“I said I would concede to the statement of Dr. Robinson that he did not use the word ‘syphilis.’”

Now, you were in attendance at that meeting, were you not? A. I was.

Q. And you heard these statements made, did you not? A. I did.

(Testimony of Thomas Richard Brooks.)

Q. And you made that statement there?

A. Read on, please.

Q. Well, let me read this to you——

A. I would like the continuance of that because that is the text of the thing to get the true context.

Q. I don't have any objection to reading to you in just a moment. I would like to ask you this question:

This is the transcript of the hearing before the Grievance Committee of the Washington State Medical [1574] Association in the Marcus Whitman Hotel, April the 22nd, 1951, at the hour of 10 a.m. The transcript of your testimony is:

“Q. Did Dr. Robinson give you any treatment?”

You said: “No, sir; none whatever.

“Q. At any time? A. No.

“Q. Answer the question, did he inform your son-in-law and daughter of your disease?

“A. Yes. On the Monday morning, October 10th, he called by telephone my son-in-law Mr. Noel Edwards and told him his father and mother-in-law had got this disease.

“Q. Did he name the disease?

“A. I was under the impression that he did name it, but at the hearing my son-in-law conceded that it was virus, that he didn't use that word on my son-in-law's statement to the trustee on December 11th. I was under the impression that that word was used. That is why the statement is in the complaint. Dr. Robinson, during this telephone conver-

(Testimony of Thomas Richard Brooks.)

sation with my son-in-law requested my son-in-law and daughter to go that day to his office [1575] for blood tests.”

Now, did you not give that statement?

A. That statement is perhaps correct, but I have never seen that deposition.

Q. Well, let me show it to you so that you may read it.

(Transcript handed to witness.)

A. I would like to read it all through, if you don't mind.

Q. No objection at all.

A. Where does it start? The page, that is what I want.

Mr. Sembower: Your Honor, I have a number of questions of the witness and it occurs to me if he would like to read this, I have no objection at all.

The Court: Well, I will adjourn, then, until tomorrow morning at 10 o'clock.

(Whereupon, the trial in the instant cause was adjourned until 10 o'clock a.m., Tuesday, March 27, 1956.) [1576]

THOMAS RICHARD BROOKS

a defendant herein, having previously been duly sworn, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Sembower:

Q. Mr. Brooks, there were one or two things in the testimony yesterday which I want to make a little more definite.

I would like to ask you what the exact dates were of the various employments that you referred to yesterday that you had had. Would you tell us for whom you worked dating back to 1948?

A. June the 6th, 1948, I worked for White & Mask, contractors, as a bookkeeper at the McNary Dam in the relocation of the S. P. & S. Railway.

Q. That was your first employment since you arrived here in [1579] this area? A. No, sir.

Q. What was your employment before that?

A. I was a salesman at Monky Ward's.

Q. And during what period were you a salesman at Montgomery Ward?

A. September 15, 1947, to March the 31st, 1948.

Q. And did you have any employment prior to that in this area? A. No, sir.

Q. Well, then, after you had worked for the contractor—what was the last date of that?

A. That was November the 30th, St. Andrew's Day.

Q. 19——? A. '48.

(Testimony of Thomas Richard Brooks.)

Q. 1948. And then what employment did you have?

A. I was employed as a salesman by the General Appliance Company, 10 East Alder.

Q. General Appliance at 10 East Alder?

A. Yes.

Q. And how long did you hold that position?

A. Until May the 25th, 1949.

Q. And what kind of appliances were being sold?

A. All domestic.

Q. All right, and then what was the next job that you held? [1580]

A. I went to A. M. Jenson's.

Q. And how long were you at Jenson's?

A. From June the 5th, 1949, to December the 1st, 1950.

Q. And then what was the next job that you held?

A. I was employed by the Electric Home Service.

Q. I'm sorry, I didn't get that.

A. I was employed by the Electric Home Service.

Q. And how long were you employed by the Electric Home Service?

A. Until I was injured.

Q. And when was that? A. In May, 1951.

Q. And then were you inactive for a spell?

A. I was.

Q. What was the injury that you had?

A. I was knocked down crossing a pedestrian crossing at Second and Poplar, at 6:15 p.m., on May the 15th, 1951.

(Testimony of Thomas Richard Brooks.)

Q. Did a lawsuit arise out of that accident?

A. It did.

Q. Were you represented by any of the attorneys active in this cause? A. None whatever.

Q. Well, then, when did you get back into active work?

A. I started work December the 1st, 1951.

Q. And where was that? [1581]

A. At Bendix Electric & Music Shop.

Q. As a salesman? A. As a salesman.

Q. Selling appliances? A. Yes, and pianos.

Q. And then after that?

A. I resigned from that on September the 22nd to open my service station.

Q. Well, now, when did you work as an investigator for the insurance company?

A. I done it all the time, even right through and up to now.

Q. That is, from 1947 to the present?

A. About 1948 to now.

Q. 1948 to now, you have worked as an investigator for the insurance company?

A. That's right.

Q. Have you been active in the Red Cross, Mr. Brooks?

A. I was active until three years ago in it, yes.

Q. When was that?

A. Oh, I couldn't give you the exact dates, but it was somewhere in the region of '50, '51 and '52.

Q. And what activities did you have in connection with the Red Cross?

(Testimony of Thomas Richard Brooks.)

A. I was in charge of radio publicity and many other jobs. [1582]

Q. And did you speak on the radio in connection with that?

A. I spoke several times on the radio, mostly every week.

Q. Now, you mentioned that there were various clubs that you joined. I would like for you to tell me the approximate times when you joined those clubs.

When did you first belong to the Chamber of Commerce? A. 1949, February 1949.

Q. And the Lions Club?

A. December, 1950. [1583]

* * *

Q. Now, I was confused about the sequence of dates in connection with Dr. Smeltzer's spinal test of your wife with relationship to the time when she fell. Was that spinal test taken before or after she fell?

A. She fell in the early days, around the 3rd or 4th, of January, 1948, and it was about May, 1948, that it became apparent that she had suffered some injury. And in June when I move to McNary and we went down there, which is Umatilla, and it was while there that we got a distinct notice that she had a drop foot. She hit her foot like that (indicating) as she went along and we wondered why. And so she came in and saw Dr. Platner—I think was right—who took X-rays.

(Testimony of Thomas Richard Brooks.)

Q. And what did he discover, if you know?

A. And then I don't know exactly how she came to go to Dr. Smeltzer, but when she came back from one visit to [1584] Walla Walla, she informed me she had to go up to St. Mary's to have a spinal blood test taken on a certain day and I arranged accordingly and brought her up, and it was to be taken the next day and I stayed overnight in Walla Walla, and it was at that time that I met Dr. Smeltzer only.

Q. Now, Mr. Brooks, you testified yesterday that the stuff that the child swallowed, the reason the stuff that the child swallowed was sitting around, was that you were moving that day, is that correct?

A. I understand that is when it took place.

Q. That is, you were moving that day?

A. We were moving at that time, yes.

Q. Did you pack other drugs or pills or anything else in an Ex-Lax box?

A. Did I pack it, did you mean?

Q. Yes? A. I did not.

Q. Did you ever keep any other drugs in an Ex-Lax box?

A. We had lots of drugs in the medicine chest.

Q. Now, Mrs. Lepiane I think was staying with the child that day, was she not?

A. She was. She had the child under her care that day.

Q. And they were at your house?

A. They were at my house. [1585]

Q. Now, did Mrs. Lepiane at that time live in that house? A. No.

(Testimony of Thomas Richard Brooks.)

Q. Did she spend a large amount of her time in the house, in that particular house, your house?

A. Well, all my daughters come and visited their mother very, very regularly, never a day went by. As to how long they stayed there, I don't know.

Q. What I am interested in is whether she was around there long enough to be thoroughly familiar with the surroundings, like the medicine closet and so on, or whether she came in only occasionally?

A. She was there every day and I think she was fully cognizant of where everything was.

Q. On page 54 of the transcript of the hearing held by the state grievance committee, your daughter, Mrs. Edwards, testified to this effect, or I am reading a quotation from it:

“My mother was shifting houses and had packed different goods in boxes, and this youngster here, not quite two, got into the box of Ex-Lax and she had both boxes and noticed it in her mouth and called Dr. Robinson.”

Do you remember hearing any account of this from Mrs. Edwards along that line?

A. I have heard something of that, but I couldn't give you [1586] as concise as you have read it.

Q. Now, she mentioned “both boxes” here. Did you know there were two boxes?

A. We had three boxes at the time.

Q. Also, you testified yesterday that you couldn't recall whether you talked with Dr. Brooks about your complaint against Dr. Robinson, is that correct?

A. That is correct.

(Testimony of Thomas Richard Brooks.)

Q. I want to ask you——

A. Except in a general way.

Q. I wanted to ask you if this refreshed your recollection: On page 187 of Dr. Peter Brooks' deposition in the state case, prior to this one, he said, I am quoting Dr. Brooks:

“He said that he had a complaint to make against you, Dr. Robinson, and he wanted my opinion as to whether he should file a personal lawsuit, which he did not wish to do, because he had a complaint, or whether he should go to the local medical society.”

And the question was:

“And what did you advise him?”

And the answer was:

“I advised him that I would suggest to him that he go before the local medical society.” [1587]

Does that refresh your recollection as to the conversation?

A. The way that Peter has put it is possibly in itself, correct, but as I remember it, the conversation that I had with Dr. Peter Brooks at that time was on the lines I was greatly concerned that twenty four hours or so before, I had been threatened by a member of the medical profession to divulge certain knowledge that he had obtained professionally by his attendance on my wife and myself to other people.

Q. And did you say that you planned a lawsuit?

A. And I was faced with the making of a very big decision.

(Testimony of Thomas Richard Brooks.)

Q. What was your decision, to sue or to go to the medical society?

A. I had to consider whether I would take one of two decisions; one, I could either go to the legal profession and throw this thing right into the open and possibly have far-reaching effects, or I could take a more stable, more quieter way of bringing it to the notice of the responsible officers of the medical society.

Q. And he suggested that you go to the medical society?

A. And he said he would prefer, he would suggest that I go to the doctors.

Q. Now, as a matter of fact——

A. That is all that was said. [1588]

Q. Now, as a matter of fact, Mr. Brooks, you had already made your decision, hadn't you?

A. I made my—I had almost made my decision.

Q. That is, you had called Mr. Fullerton earlier that day, had you not? A. I had, yes.

Q. So that at the time that you talked to Dr. Brooks, you had already decided on your course of action?

A. I wanted to know—the thing was that I wanted to talk with somebody and there was nobody than a doctor.

Q. Did you tell him at that time that you had already talked to Mr. Fullerton?

A. I told him I had requested Mr. Fullerton to arrange a meeting with the doctors.

Q. Now, also, Dr. Brooks in that deposition said

(Testimony of Thomas Richard Brooks.)

that he thought that he saw you in the afternoon. You testified that you had seen him, you thought, in the morning.

A. Well, that is my recollection.

Q. What is your recollection?

A. I am almost positive that I saw him at 10:30 on the 9th of October, 1950.

Q. Dr. Brooks said he usually operated in the morning. A. Well, I can't question that.

Q. Now, Mr. Brooks, the swallowing incident involving your granddaughter happened on June the 9th, I believe, and [1589] your daughter filed her complaint August the 29th. Now, meanwhile, had you not become extremely exasperated with Dr. Robinson and didn't you in fact coach your daughter to file that complaint? A. Absolutely no.

Q. All right, now—

The Court: Let's see, that is a double question. Which is the "absolutely no"?

Mr. Sembower: Yes.

The Court: You have got two elements there in your question.

Mr. Sembower: Yes.

Q. First, I will ask you, didn't you during that interval between June the 9th and August the 29th, become extremely exasperated with Dr. Robinson?

A. No.

Q. All right, and then I will ask you the second part of it, didn't you in fact coach your daughter to file that complaint? A. No.

Q. Did you know that your daughter telephoned

(Testimony of Thomas Richard Brooks.)

Mr. Fullerton first and he said that her complaint on that dollar and a half bill wasn't warranted?

A. I didn't know a thing about it.

Q. Isn't the real reason, Mr. Brooks, that you got in touch [1590] with Mr. Fullerton to complain is the fact that you generally resented Dr. Robinson's conduct of your wife's case? A. No.

Q. Now, weren't you told, Mr. Brooks, that the substance which your granddaughter swallowed was poison, and didn't you tell the hearing conducted by the society that it was poison, and then at a later time changed that to Ex-Lax?

A. I never changed it at all. I said it was Ex-Lax at first, as I had been informed, and it is Ex-Lax right to this day.

Q. And you made no change?

A. No change.

Q. To that effect?

A. Other than refer that it was serious and could be a poison.

Q. At any time, you made no change?

A. Yes, it was Ex-Lax all the time.

Q. That is, you were told it was Ex-Lax?

A. I was told about it. I know it was Ex-Lax.

Q. Did you tell the men at the hearing that Dr. Robinson said he would give you until noon the next day, that is, August the 8th, to secure the letter?

A. August the 8th? You are rather—— [1591]

Q. Well, now, didn't——

A. I had no conversation with anybody about August the 8th.

(Testimony of Thomas Richard Brooks.)

Q. I beg your pardon, I have it October the 8th.

The Court: Pardon me, if you are trying to impeach him here, I wonder if you shouldn't give him the time and place and give him an opportunity to see whether he said so and so?

Mr. Sembower: I just read my notes incorrectly.

The Court: Yes.

Q. (By Mr. Sembower): Didn't you tell the men at the hearing that Dr. Robinson said that he would give you until noon the next day, that is, October the 8th, to secure the letter?

A. Which hearing?

Q. That was the hearing of the local society?

A. What date?

Q. The hearing which was held by the extraordinary group that convened on October the 12th, I think—

Mr. McNichols: The 11th.

Mr. Sembower: The 11th.

A. You are referring to the original complaint as made by me?

Q. That's right; yes.

A. I did tell them that, yes.

Q. Isn't it a fact that it was you who told the woman at [1592] your house, Mrs. Lepiane, or whoever it was that afternoon who was staying with the child, to telephone Dr. Robinson?

A. Would you repeat that, please?

Q. Wasn't it in fact you who told whoever it was staying with the child to telephone Dr. Robinson for advice in that situation?

(Testimony of Thomas Richard Brooks.)

A. How could I? I wasn't there.

Q. Did she get in touch with you and tell you that there was a crisis there? A. No.

Q. Well, all right. Now, didn't you in fact tell the men at that hearing on October the 11th that the child drank the poison, rather than ate it?

A. I never did.

Q. Never did. And you didn't later change your story on that?

A. I never changed my story at any time.

Q. All right, now, Mr. Brooks, when you telephoned Dr. Robinson back, the second call on Sunday morning, October the 8th, who answered the telephone, if you recall? A. Dr. Robinson.

Q. It was his voice that came on the wire when you called? A. It was. [1593]

Q. Now, that is, you have a clear recollection? You couldn't have been so excited that you didn't notice who answered, could you?

A. I only spoke to one person at the other end of the phone and that was Dr. Robinson.

Q. Now did you have an opportunity last night, Mr. Brooks, to carefully go over the transcript which I gave you yesterday?

A. I went over it this morning.

Q. Now, you testified that Dr. Robinson did tell your son-in-law, Noel Edwards, that you had syphilis, and I showed you Mr. Edwards' statements that he did not, to the effect that he did not so state, those statements being made by Mr. Edwards at the meeting of the trustees of the local society, Novem-

(Testimony of Thomas Richard Brooks.)

ber the 21st, 1950, and again at the April 22nd, 1951, meeting of the state grievance committee and your acknowledgment at that latter meeting of the fact that Mr. Edwards had said that.

Now, you have examined that transcript, do you now wish to change your testimony?

A. Why should I change my testimony?

Q. Your testimony today is the same as it was on that occasion, as it is reported in the transcript?

A. You are rather confusing the issue of the question to me.

Q. I am just asking you whether you want to change your [1594] testimony?

A. You have got it too involved, sir. I can't answer it.

Q. Well, now, you don't question that Mr. Edwards made that concession at the November meeting, do you? A. What concession?

Q. Well, he said: "I concede that Dr. Robinson did not use the word 'syphilis'" according to the transcript? A. He said, "I will concede."

Q. Oh, you think there is a significance to the word "will"? A. I do.

Q. Well, now, with respect to this, you were acting entirely on what Edwards told you, weren't you?

A. That's all I could go on, as to his conversation with Dr. Robinson. I was not present.

Q. So that is what you were going on?

A. I only know what my son-in-law told me and he told me that the Doctor did use the word and then he withdrew it and acceded that he didn't, that

(Testimony of Thomas Richard Brooks.)

he used the word "virus." I had no control on what he said or thought.

Q. All right. Now, Mr. Brooks, did you enter into some kind of an agreement with the doctors at that meeting where your statement was taken that you would not file suit against Dr. Robinson?

A. I said this, and I think you will find it in the statement of October 11th, that I would do nothing until "You [1595] gentlemen have considered this complaint," or words to that effect.

Q. Had you given any commitment earlier than that meeting to Mr. Fullerton that you would not file suit?

A. I may have done it in conversation, but it had been definitely on the same lines.

Q. I am reading from Dr. Tompkins' transcript, the transcript of his deposition, and the Doctor was asked this question:

"Q. What was the nature of that conversation between you and Mr. Fullerton?"

This was conversation which took place prior to the meeting which was held at which you gave your statement. He answered:

"A. Mr. Fullerton was the one who had contacted Mr. Brooks after he had given his complaint, and also he is the one who contacted Mr. Brooks regarding the scheduling of the hearing. Mr. Fullerton told me that Mr. Brooks was contemplating a suit and I passed the word to Mr. Fullerton to just tell Mr. Brooks to sit tight, don't try to push things too fast. This was the only discussion, it went

(Testimony of Thomas Richard Brooks.)

through Mr. Fullerton. Whether he passed that word on, I don't know.

“Q. Did you arrange for a promise from Mr. Brooks through Mr. Fullerton that he would [1596] not take any action without your permission?”

“A. I asked that and I received word back that it had been given.

“Q. So it was your opinion that no suit would be commenced without your consent?”

“A. Correct.”

Now, does that refresh your recollection concerning any conversations you had with Mr. Fullerton?

A. My recollection is the same.

Q. The same as this statement?

A. That I did not give any doctor any direct promise at the doctor's request or from the doctors. At no time did I ever receive a request from the medical society or the doctors individually or collectively, a request to take no legal action. The subject was never discussed.

The Court: Pardon me, what is it you were reading from? Is that a statement?

Mr. Sembower: Reading from the transcript of Dr. Tompkins' deposition.

The Court: Isn't that a rather unorthodox method of examining here? If you want to impeach him, you can bring his deposition to his attention as to what he has said, but how in the world would he be bound by what Dr. Tompkins testified about what Mr. Fullerton told him about what Mr. Brooks had

(Testimony of Thomas Richard Brooks.)

told Mr. Fullerton? Isn't that what you are [1597] getting at here?

Mr. Sembower: No, what I wanted to do was I wanted to ask him, in the light of this, he recalled any conversations at all with Mr. Fullerton which would give rise to a report of this kind.

The Court: And in order to do that, you are taking testimony of some other doctor or some other person who testified as to what Fullerton had told him that Mr. Brooks had told Fullerton. I think that is going a long way around the bush in trying to impeach a witness.

Mr. Sembower: I will withdraw that question.

The Court: Well, he has already answered it, go ahead, but I questioned your method here. I think that you are trying to impeach him aren't you?

Mr. Sembower: Yes, but I didn't want him to feel, your Honor, that I was just pulling something out of the air. I had this statement here.

The Court: Well, I don't think it is proper to confront him with all of these statements, particularly hearsay statements that have been made by other witnesses, and then try to make him responsible for them. The method of impeachment is to bring out what he has testified is inconsistent with what he has testified today, I should think.

Q. (By Mr. Sembower): I believe your testimony, Mr. Brooks, is that you did not have any conversation with Mr. [1598] Fullerton relative to whether you were going to sue or not, is that correct?

(Testimony of Thomas Richard Brooks.)

A. I had no direct conversation. I may have just said that I, as I did to Dr. Brooks, I said that I had to take a decision of one of two courses, and having gone to the doctors, I wouldn't immediately run to the lawyer. I had no desire to play both ends against the middle.

Q. Now, Mr. Brooks, who arranged for you to attend the first meeting, that is, the meeting at which your statement was taken? Did anyone get in touch with you other than Mr. Fullerton, which you testified to yesterday?

A. I have nothing to add to that testimony.

Q. Now, who, if you recall, arranged for you to attend the November 21st hearing?

A. I received a letter signed by Mr. Fullerton.

Q. Did anyone else get in touch with you in connection with that meeting?

A. Not that I have any recollection of.

Q. In a deposition given in the state suit, the question to you was——

The Court: When and where, Mr. Sembower?

Mr. Sembower: I beg your pardon?

The Court: Shouldn't he know when and where?

Mr. Sembower: Yes. Pages 22 and 23 of the deposition taken in March, 1953, I believe it was at the Marcus Whitman [1599] Hotel.

Mr. Kimball: It wasn't there, it was at the court house.

Mr. Sembower: Oh, was it at the court house?

The Court: If he remembers it, it is all right, it doesn't make any difference particularly.

(Testimony of Thomas Richard Brooks.)

Do you remember the deposition, Mr. Brooks?

A. I remember giving a deposition, your Honor.

The Court: Yes, all right.

A. In the court house.

Q. (By Mr. Sembower): The question was:

“Q. You told them your story of your own free will and accord”?

And at that time it appears in the transcript that you answered, “Yes.”

And then the question was:

“Q. Then later, you attended a meeting of another group and told your story to them of your own free will and accord?”

And the transcript then says:

“A. No. I was summoned to attend that, but I had agreed that I would be available at any time.”

And then the question was:

“Q. Well, you went there freely and voluntarily?” [1600]

And you said:

“A. Yes, I raised no objection.”

Now, I wanted to ask if you recall with whom you had an agreement to participate in further proceedings? A. Other than——

Mr. Kimball: The witness has not testified he had any such agreement.

The Court: I didn't hear any testimony of an agreement there.

Mr. Sembower: He says he agreed to attend.

The Court: He said he attended voluntarily.

Mr. Sembower: He said: “I was summoned to

(Testimony of Thomas Richard Brooks.)

attend that but I had agreed that I would be available at any time.”

A. In my complaint made to the doctors on October the 11th, 1950, I assured them at the conclusion that I would be available at any time for any further information that they may desire, and I took this to be part of the obligation I had entered into when making the complaint, to make myself available if they required me, because I had made the complaint and I should be prepared, I considered, to be available.

Q. Then there was the hearing of the state grievance committee, which was held on April the 22nd, 1951. You attended that. Who arranged with you to attend that meeting? [1601]

A. I had a notice of it.

Q. And you attended pursuant to that notice?

A. I did.

Q. Did anybody talk to you prior to that meeting?

A. Who do you mean by anybody?

Q. Well, I mean anybody.

A. I told my children about it.

Q. Well, I mean contacted you?

A. Nobody contacted me other than what I remember in that letter.

Q. Now—— A. “Anybody” is a big word.

Q. Now, I show you Plaintiff’s Exhibit 103, which has been admitted, letter from James H. Berge to Mr. Thomas R. Brooks and ask you if you received that letter, if you recall?

A. What is the date?

(Testimony of Thomas Richard Brooks.)

Q. The original of that?

A. I believe I did because it is addressed to me. I remember getting some communication.

Q. It says that an enclosure was sent along with the decision of the Washington State Grievance Committee.

A. I may have received all the papers. All the papers I have are in the hands of my attorney.

Q. But you do, to the best of your recollection, remember [1602] that you did receive the decision?

A. I remember receiving a communication and I have no reason to doubt it was that.

Q. Do you remember when you received it? The date on this letter is May the 7th.

A. Well, I take it I received it in the course of mail.

Q. And now the hearing, the expulsion hearing, so-called, occurred on May the 22nd, 1951. Did you attend that? A. I did not.

Q. Were you not present there at all?

A. I was not there at all in the meeting.

Q. But were you then near the meeting?

A. I went to the hospital to see a friend who was sick and I went downstairs into the basement and visited with my son-in-law and Mr. Fullerton in the basement at the same time as Dr. Robinson was sitting at the other end of the basement outside the meeting.

Q. Is it your testimony, then, that that was just merely a coincidence? A. Well, it could be.

Q. Just a happenstance that you were there?

(Testimony of Thomas Richard Brooks.)

A. It just happened, yes.

Q. Had anyone notified you before that meeting of May the 22nd that it was going to take place?

A. I did not have any information. I didn't even know it [1603] was on, except that I knew my son-in-law had to go, had been invited to go, and I just went down there curious.

Mr. Sembower: That is all, your Honor.

Cross-Examination

By Mr. Kimball:

Q. Mr. Brook, I hand you what has been marked as Plaintiff's Exhibit 18. I think you saw it yesterday and referred to it as the Brooks complaint?

A. Yes, sir.

Q. Did you make the statement that is therein contained to the doctors that were gathered and shown present on October the 11th, 1950?

A. Yes, sir.

Q. Did you sign that when it was transcribed?

A. Yes, sir.

Q. That is your signature at the end?

A. That is my signature.

Q. You testified yesterday you had made some small corrections in the body of it. I ask you now, Mr. Brooks, if in addition when it was presented to you for signature, did you add the letter that appears in the back cover? A. I did.

Q. How did you happen to do that? [1604]

A. I received this letter from Dr. Robinson dated October the 10th, received by me per regis-

(Testimony of Thomas Richard Brooks.)

tered mail on October the 12th, the day following my making of the complaint before the doctors, and I felt that it was a pertinent document which should be in the possession of the society, having received my complaint as they had the day before, and it was with that intention that it should be added to it as an addendum to my complaint that I passed it on to the society, and this is a true copy.

Q. And the statements you made, as shown therein, were believed by you and were true at the time you made them?

A. They are still true, sir.

The Court: When you get through with it, I just want to see that letter attached, but you go ahead and finish with it.

Q. (By Mr. Kimball): Mr. Brooks, I ask that you read from Exhibit 18, starting with line 9 on page three, and go down through the last paragraph on page four.

A. (Reading):

“On receiving this copy of the letter, Dr. Robinson called at my daughter’s address on Thursday, October 5th, and asked to see the original letter, but they had not, as then, received it. He called again on the Friday evening and requested that my son-in-law see him, [1605] but he was out. However, on Saturday morning, he went to my son-in-law’s work and demanded he be given the letter. He had gotten the letter then. My son-in-law said he would think it over and see Dr. Robinson on Monday, October 9th.

“On Saturday night, I got a telephone call from Dr. Robinson. He insisted that I get the letter from

(Testimony of Thomas Richard Brooks.)

my daughter and son-in-law and hand it over to him.”

The Court: Just a moment here now. I questioned Mr. Sembower’s method, I question yours. This is hearsay, even though he reads it from the statement. I don’t know what the purpose is, but I am not going to consider it as testimony as long as it is hearsay.

Mr. Kimball: I am not introducing it for that purpose. It is a statement that he made to the doctors and, as such, would certify to the doctors it was part of his complaint.

The Court: If you want to call my attention to the document, you need not have him read it. It is before me, it is in evidence.

Mr. Kimball: I concede to your Honor’s ruling, but from here on I think it takes a different tone. He is testifying to things that he knows.

The Court: Well, all right. Even though he reads it [1606] from a statement, it is still hearsay and I will regard it as such.

Mr. McNichols: Is he testifying, or is he reading a statement?

Mr. Kimball: He is reading an exhibit now.

The Court: He may look at that to refresh his memory, but if he is going to testify, he should testify.

Go ahead.

The Witness: Continue to read, sir?

The Court: Yes, all right, go ahead.

(Testimony of Thomas Richard Brooks.)

A. I think the last place I read was "son-in-law and hand it over to him." (Reading continued):

"I said, 'I have nothing to do with it. I haven't any details of the complaint. It has nothing to do with me.' He said, as head of the household of the family, I should tell my daughter and son-in-law I had to get the letter and give it to him. I had an engagement and I told him, 'I am in a hurry. I wasn't interested in the darn thing. That is all, Doctor. Good night.'

"I saw my son-in-law that evening and I requested that I be given the opportunity to see the letter, as I didn't know anything about its contents at that time. On reading it, I [1607] couldn't see anything to the letter. It was, in my view, a very well phrased letter.

"Well, at ten minutes to eight on the Sunday morning my telephone rang and it was Dr. Robinson. This is the conversation. I answered the telephone, 'Hello.' He said, 'This is Dr. Robinson.' I replied, 'This is Mr. Brooks.' He immediately said, 'Well, Mr. Brooks, I have decided if you don't have your daughter give me that letter, I will have to report you and your wife to the medical authorities. If you hand the letter over, I won't do anything.' I replied, 'Doctor, that is a threat.' He replied, 'No, it isn't.' I said, 'It is a threat because you have said to me, Dr. Robinson, if I do A, you won't do B, but if I don't do A, you will do B. I am awfully surprised at your action. I cannot understand it. I didn't want to get in this argument and now you

(Testimony of Thomas Richard Brooks.)

have me in over my head because I happen to be one of the unfortunate ones to have something in my blood that you state you should have notified authorities about. Why haven't you notified them before? I am not going to let you have the letter now.'

"He then threatened to tell my son-in-law [1608] and daughter and my other son-in-law and daughter. I said, 'If you do, Doctor, you will have me taking the view that you are a cantankerous type and a disgrace to your profession.' He then said he would give me until noon that day, Sunday, to get the letter to him."

Mr. Sembower: Your Honor, for the record, I would like to make an objection to that as hearsay. Though the Court has already ruled, I think I should make an objection for the record.

Mr. Kimball: I want it perfectly clear as to what our position is. We are not arguing at this time the truth or falsity of it, we are arguing that the complaint was made as set forth here to the doctors.

The Court: Well, it will be received. I understand that counsel's purpose now is to show that this statement was made to the doctors and it will be accepted as evidence of that. It isn't accepted as testimony of this witness as to what was said over the telephone.

Mr. Sembower: Thank you.

The Court: Because he isn't testifying.

Mr. Sembower: I won't object to it if it is what he has said.

(Testimony of Thomas Richard Brooks.)

Q. (By Mr. Kimball): Then I will ask you, did you make the statement contained herein to the group before you at [1609] that time?

A. I did.

Q. And were the statements therein true?

A. They were true.

Q. And, Mr. Brooks, at the hearing before the doctor group on November the 21, 1950, did you repeat the same statement, in substance?

A. I did.

Q. And is it substantially shown by the transcript of that hearing? A. It is.

Q. At the time you appeared before the group on October the 11th, 1950, Mr. Brooks, had you been solicited by any person to make that statement?

A. None whatsoever.

Q. Had you ever been employed by me prior to that time? A. No.

Q. Had I ever done any work for you professionally? A. No, sir.

Q. Were we acquainted?

A. We were not acquainted.

Q. Between the dates of October the 11th, 1950, and November the 21st, 1950, were you contacted by me regarding the statement that you had made?

A. No, sir. [1610]

RALPH W. STEVENS

a defendant herein, called as an adverse witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Would you state your full name, please, Dr. Stevens? A. Ralph W. Stevens.

Q. And what is your present home address?

A. Abbott Road, Walla Walla.

Q. You are a practicing physician in Walla Walla, are you? A. Yes, sir.

Q. And where is your office located, Doctor?

A. At 308 Baker Building.

Q. Are you a specialist or a general practitioner? A. I am a specialist.

Q. And what is your specialty?

A. I am an ophthalmologist and otologist. It means eye, ear, nose and throat.

Q. Have you been located at that office address for a number of years? A. Yes, sir.

Q. Were you located there during the years 1950 and '51? A. Yes, sir. [1614]

Q. You are a member of the Walla Walla Valley Medical Society, are you, Doctor? A. Yes.

Q. Have you been at all times since you have been practicing in Walla Walla? A. Yes.

Q. Are you also a member of the organization you refer to as the bureau? A. Yes.

Q. Incidentally, you have been present in court all during these proceedings, haven't you?

(Testimony of Ralph W. Stevens.)

A. Yes, sir.

Q. So if we refer sometimes to short names and such, you are familiar with the testimony to date?

A. Yes, sir.

Q. You are a defendant in this action?

A. Yes, sir.

Q. And you are, are you, acquainted with the plaintiff, Dr. Miles Robinson? A. Yes.

Q. Approximately when did you first make his acquaintance? A. I think sometime in 1948.

Q. Shortly after his arrival in Walla Walla?

A. Yes.

Q. What offices have you held, Dr. Stevens, in the local [1615] society, the Walla Walla society, if any?

A. I think I have been a member of the board of trustees, I was secretary of the society two years before the war, and I was chairman of the grievance committee in 1950-52.

Q. What offices, if any, Dr. Stevens, have you held or do you now hold in the bureau, the Medical Service Bureau?

A. I was president of the Walla Walla Valley Medical Service Corporation in 1948.

Q. During the calendar year 1948?

A. Yes.

Q. Have you ever held any offices in the state medical association? A. No.

Q. Or in the American Medical Association?

A. No.

Q. Do you recall, Dr. Stevens, when the question

(Testimony of Ralph W. Stevens.)

of the local grievance committee first came up in the society? A. Yes.

Q. Approximately when was that?

A. April 25th, 1950.

Q. Are you speaking now of the date of the meeting at which the motion was passed with respect to that committee? A. Yes.

Q. Had there been preliminary work done toward the organization of the grievance [1616] committee? A. No.

Q. Had you communicated prior to that time with any other medical organization regarding the grievance committee? A. No.

Q. You did, however, subsequently, I believe?

A. Yes.

Q. Who, Dr. Stevens, if you recall, made the motion to create the grievance committee?

A. I did.

Q. And it was acted upon at that meeting?

A. Yes.

Q. When were the members of the grievance committee appointed?

A. Sometime in the next month after that meeting.

Q. By whom? A. By Dr. Page.

Q. Did Dr. Page appoint you?

A. Yes, he told me that I was appointed and I was to act as chairman, and he told me who the other two members were.

Q. And who were the other two members?

A. Dr. Arthur Yengling and Dr. I. C. Bohlman,

(Testimony of Ralph W. Stevens.)

and he also told me that he had asked Dr. Lyman to sit in as an advisor if he was needed.

Q. Dr. Lyman was an older physician? [1617]

A. Yes.

The Court: Pardon me, who was the second one? Bowman? A. Bohlman.

The Court: What were the initials?

A. I. C., I believe.

The Court: All right.

Q. (By Mr. McNichols): Doctor Lyman wasn't actually a member of the committee?

A. No, sir.

Q. Do you know who informed the other members of their status on the committee?

A. I imagine the president did.

Q. It wasn't you, at any rate?

A. Dr. Page. No.

Q. Well, then, when did you proceed to operate as a committee, Doctor, as a grievance committee?

A. Well, as soon as Dr. Page had told me that I was to be chairman, which was toward the end of May, I contacted Mr. Fullerton, who was the executive secretary of our society, and asked him to write to our Washington State society and to the AMA and to any other societies that he knew of who had grievance committees to get all the information he could so that we could formulate some type of plan to operate one. [1618]

Q. This was in the spring or early summer of 1950? A. Yes.

(Testimony of Ralph W. Stevens.)

Q. And did Mr. Fullerton follow those instructions?
A. Yes, he did.

Q. And you obtained certain memoranda and information on grievance committees, did you?

A. We received a small amount of material. We didn't receive as much as I would like to have gotten.

Q. Was this grievance committee program originally promulgated through the AMA?

A. Yes, sir, it was recommended by the board of trustees of the AMA in December, 1949.

Q. When we refer to the "AMA," we are referring to the American Medical Association?

A. Yes.

Q. Was it also promoted by the Washington State Medical Association, the grievance committee?

A. I believe so. An editorial came out in April, 1950, recommending it.

Q. Now, the membership of this grievance committee in Walla Walla was kept secret from the other members of the society, wasn't it?

A. Yes.

Q. In other words, the other members of the medical society had no knowledge of who was on the committee? [1619]
A. That's right.

Q. In fact, as later turned out, one of the members didn't know he was on it, isn't that right?

A. Yes.

Q. And which one was that?

A. Well, I wouldn't say he didn't know. I think

(Testimony of Ralph W. Stevens.)

he was notified by Dr. Page he was on it, but he hadn't participated in any of our discussions.

Q. Well, let me put it this way, Doctor: Was there ever a meeting of the entire grievance committee? A. Not at that time.

Q. Was there at any time in 1950?

A. I believe there was some discussion with the three members regarding proposed rules and regulations of the grievance committee.

Q. That was subsequent to the time this controversy arose, though, wasn't it? A. Yes.

Q. Did you and any other member or members of the committee proceed to compile rules and regulations for the operation of the grievance committee? A. Yes.

Q. Who did you work with on that?

A. Dr. Yengling.

Q. Just Dr. Yengling, wasn't it? [1620]

A. Yes.

Q. And when did you start that preparation on the rules and regulations?

A. Well, I had received some of this information about grievance committees and I had discussed it with Dr. Yengling telling him that we were getting some material together and that we would probably publish an article in the paper soliciting any complaints the public might have, letting them know that we had a grievance committee, and formulating our plans as complaints came in.

Q. Well, now, all during the controversy here between the society and the grievance committee and

(Testimony of Ralph W. Stevens.)

Dr. Robinson, there were, in fact, no rules and regulations for the grievance committee, were there?

A. There was no adopted rules as far as the society was concerned. They were just tentative rules.

Q. By rules now, are you referring just to ideas of procedure that you and Dr. Yengling had discussed? A. Yes.

Q. In other words, there weren't any printed rules of any kind? A. No.

Q. And your procedure arose out of merely informal discussions between yourself and Dr. Yengling, didn't it? A. Yes. [1621]

Q. You didn't discuss it with Dr. Bohlman or Dr. Lyman? A. No.

Q. Or the trustees? A. No.

Q. Or any officer of the society? A. No.

Q. Or it was never again raised at a society meeting, was it, until sometime later?

A. Sometime later.

Q. As a matter of fact, the rules and regulations of the grievance committee of the society were not adopted until the meeting at which Dr. Robinson was expelled, isn't that right?

A. That was when they were officially adopted the second time, I believe.

Q. May 22nd, 1951? A. Yes.

Q. And now, you refer that that was the second time; the first time—correct me if I am wrong—was on the 27th of March, 1951? A. That's right.

Q. And those regulations were just re-enacted on the 22nd of May?

(Testimony of Ralph W. Stevens.)

A. Yes, after they had been approved by the Washington State board of trustees. [1622]

Q. But they weren't in effect in the society until after the 22nd of May, 1951, were they?

A. Those rules were not.

Q. Well, there weren't any rules other than your informal agreement with Dr. Yengling?

A. That's right.

The Court: Time for recess, court will recess for ten minutes.

(Whereupon a short recess was taken.)

Mr. McNichols: Mr. Oden, would you read the last question and answer, please?

(Whereupon, the last question and answer were read.)

Q. (By Mr. McNichols): Dr. Stevens, was there any activity on behalf of the local grievance committee during the summer of 1950 prior to August? A. No, sir.

Q. What was the first complaint you received as chairman of that committee?

A. I don't recall which was the first. I obtained three complaints within a day or two toward the end of August, 1950.

Q. Oh, three complaints? A. Yes.

Q. Was one of those the so-called Edwards complaint here against Dr. Robinson? [1623]

A. Yes, sir.

Q. Unless it becomes necessary, I see no point in mentioning the names of the other doctors.

(Testimony of Ralph W. Stevens.)

Did you proceed then to act in your capacity as chairman of the grievance committee on those three complaints?

A. Yes, I took the three complaints along with me and contacted Dr. Yengling and showed them to him. We were surprised because they all come in at once several months after we had published the notice in the paper, we thought at first there weren't going to be any complaints.

Q. Did you discuss it at all with Dr. Bohlman?

A. No.

Q. Or Dr. Lyman. Then with respect to the Edwards complaint, you communicated with Dr. Robinson, is that right? A. Pardon?

Q. You saw Dr. Robinson then about the Edwards complaint? A. Yes.

Q. Did you read that complaint at the time you got it carefully? A. Yes.

Q. Did you discuss it with Mr. Fullerton?

A. No. [1624]

Q. You were familiar with the actual wording of it? A. Yes.

Q. Then you had your discussion with Dr. Robinson on the street? A. Yes.

Q. Was that just accidentally running into him?

A. No, I planned to just meet him informally and talk to him about it, rather than take his time at his office or to call a meeting of the whole committee to talk to him about it.

Q. I mean, you didn't plan the specific meeting?

A. No, I just planned to see him, either at the

(Testimony of Ralph W. Stevens.)

hospital or on the street, wherever I would run into him.

Q. And then you discussed it with him on the street? A. Yes.

Q. You heard the testimony that he gave here about your discussion? A. Yes.

Q. And was that substantially what your conversation was with him?

A. Yes, that was included. There were a few other things that were mentioned that he didn't bring out.

Q. What was the conversation between you and Dr. Robinson, as you remember it?

A. Well, I stopped him and I said, "Dr. Robinson, I wonder [1625] if you could spare a few minutes to talk to me. We received a complaint from Mrs. Noel Edwards about a dollar and a half bill, and I am president—or chairman of the grievance committee."

Q. Did you show him at that time the complaint?

A. No, I didn't.

Q. Did you have it with you?

A. No, I didn't. And I explained to him that the complaint was over a matter of receiving a prescription; that this child had swallowed some posion or—I don't think—I think I said swallowed Ex-Lax from what was in the complaint, but swallowed something—"and they understood they were to receive a prescription and they didn't get it," and when they received a bill for a dollar and a half, they contacted his office telling them they hadn't re-

(Testimony of Ralph W. Stevens.)

ceived a prescription, and then they were told it was for a telephone call.

Q. Now, at that time, did you tell Dr. Robinson that you were on this grievance committee?

A. I told him I was chairman of the grievance committee.

Q. Did you tell him who the other members were? A. No.

Q. At that time, he would have no way of knowing unless you told him who was on the committee?

A. No. And then, do you want me to continue answering this [1626] question?

Q. Yes, just finish the conversation, Doctor.

A. I asked him if he remembered anything about it and he seemed a little surprised and he said, "Well, yes, I faintly recall something about a prescription. I had tried to contact the family several times and they had moved the child from one house to another and I wasn't able to reach them." But then he said, "I don't think you have any business asking me about this question. This is a matter between me and my patient."

And I said, "Well, we aren't trying to tell you what you should charge, but the society has set up a grievance committee to hear and receive complaints and settle disputes between patients and that is all I am attempting to do is to settle this amicably."

Q. Did you suggest to Dr. Robinson that possibly he should go and talk to the Edwards about it or arrange a discussion with them of some kind?

A. No, I didn't. I suggested to him that, since

(Testimony of Ralph W. Stevens.)

there was a misunderstanding over the prescription and it was a small amount, that the best thing would be just to forget about the bill and that was the time when he said: "Well, Ralph, you aren't so ethical yourself. You are making a profit from selling glasses."

And I was surprised that he would change the tenor [1627] of the meeting to attacking my ethics, and it was the first time anyone in the society had ever brought that up. The American Medical Association had changed the Principle of Ethics the year before and it was quite confusing and I was puzzled over them myself.

Q. Did that irk you somewhat?

A. Well, I was a little bit irked and I said: "Well, if I am unethical, the majority of other eye specialists who dispense their own glasses are unethical."

Q. Along that line, Dr. Stevens, subsequent to that time you were informed by the trustees that there were certain things in your practice that needed correction, weren't you? A. Yes.

Q. Did you make those corrections?

A. Yes, but I haven't finished answering this question.

Q. That is all right, I just wanted to keep the sequence. Go ahead.

A. I said: "Furthermore, there aren't any facilities available locally to dispense glasses unless we provide them ourselves." I said: "I think it is the same thing as if you were practicing in Dixie,"

(Testimony of Ralph W. Stevens.)

which is a small town near here, "and there was no drug store there and you had to dispense drugs and medicines, it would be perfectly ethical." And then he said, "Well, I don't [1628] want to argue with you about the case. I have got to run to the office now and I will see you later."

That was the end of the conversation.

Q. That was the last time you discussed it with Dr. Robinson until after the letter had been written, then?

A. No, I discussed it in the open meeting of September 26th, 1950, before the society.

Q. Oh, was that the discussion in general about the grievance committee that was held at that meeting?

A. Yes he brought up the fact that I had no right to talk to him about any of his business or his fees that he charged patients.

Q. Well, then, getting along with the story, Doctor, this is Plaintiff's Exhibit 14 I am showing you. It purports to bear your signature and is a letter concerning the Edwards complaint.

A. I recognize it.

Q. And you wrote that letter, did you?

A. Yes.

Q. Did you turn that over then to Mr. Fullerton?

A. Yes. I delivered it to him by hand.

Q. Approximately when? I notice that it is dated 9-27-50.

A. That is the date I wrote it.

Q. You delivered that in person to Mr. Fullerton?

A. Yes. [1629]

(Testimony of Ralph W. Stevens.)

Q. Well, now, in the first paragraph of that letter, Dr. Stevens, you state that the complaint regarding the treatment of Noeline Edwards, who was the child, was investigated by the grievance committee? A. Yes.

Q. Would you just tell briefly the extent of that investigation?

A. Well, I talked to Dr. Robinson about the case and it was essentially or substantially the same as the complaint in the letter, so I saw no reason to investigate it further.

Q. You never talked to anyone else about it that was involved in the actual dispute? A. No.

Q. You didn't talk to the mother of the child?

A. No.

Q. Did you talk to the woman who was the baby sitter? A. No.

Q. No one? A. No one.

Q. Did it strike you, Dr. Stevens, at the time that the complaint was actually made by Mrs. Edwards that it was entirely a second hand story?

A. Not necessarily.

Q. As it turned out, in fact, it was, [1630] wasn't it?

A. It was second-hand evidence; yes.

Q. In other words, Mrs. Edwards was stating in the complaint what someone else had said at some date?

A. Well, part of it was that second-hand evidence. The other evidence was that she had gone to the office and she had done that herself.

(Testimony of Ralph W. Stevens.)

Q. I don't believe you stated whether or not—maybe you did—you did discuss this with Dr. Yengling before writing the letter? A. Yes.

Q. Did he approve the writing of it?

A. Yes.

Q. And that was the extent of your meeting, wasn't it, your discussion with Dr. Yengling?

A. Well, I saw him the day following the medical society meeting September the 26th when Dr. Robinson brought up the matter before the society and was not supported, and we felt that in order to settle the whole matter, we would write this letter telling them or recommending them to drop it.

Q. Would you examine the actual complaint, Dr. Stevens, Plaintiff's Exhibit No. 10, just briefly? You may be familiar with it without examining it. Say so if you are.

A. Yes; I have seen this complaint. [1631]

Q. Well, the actual complaint itself, would that, in your opinion, establish any grounds for taking any action against the doctor of any kind, assuming everything in there is true?

A. No; it would not, I don't believe.

Q. And subsequently, before the state grievance committee, as I recall, the question of whether there was a meeting held by the grievance committee on this matter was raised. Any reference you have made to a meeting there, I assume, you would be referring only to your discussion with Dr. Yengling? A. That is right.

(Testimony of Ralph W. Stevens.)

Q. Where was that discussion held?

A. It was either at his home or at Dr. Brooks' home.

Q. Was it——

A. I think it was at Dr. Yengling's home.

Q. There was no appointment specifically for discussing this complaint, was there? A. No.

Q. You just happened to get together and the matter came up?

A. Well, I intended to see him about it.

Q. Did all of these three complaints come to you from Mr. Fullerton? A. Yes.

Q. He handed them over to you [1632] personally? A. Yes.

Q. Was there any record of any kind, Dr. Stevens, of the other two complaints?

A. I have not been able to find anything in the files of the medical society. I looked about two weeks ago.

Q. Did those complaints ever go beyond you as chairman of the grievance committee? A. No.

Q. They never went to the trustees?

A. No.

Q. And there is now, to the best of your knowledge, no record of those complaints?

A. Dr. Carlson, who had received a letter regarding one complaint concerning him, told me that he might have the copy of the letter filed away in some of his things in the attic. He is in the Army, right now.

Q. Well, there have been efforts made during the

(Testimony of Ralph W. Stevens.)

pretrial and discovery proceedings in this case to locate them and they have never been located?

A. That is right.

Q. Dr. Stevens, during this period sometime, you went to Chicago, I believe? A. Yes.

Q. Do you remember approximately when you left Walla Walla for Chicago? [1633]

A. I left Walla Walla October the 5th and I returned October the 20th by train.

Q. When you first appointed Mr. Fullerton as secretary of the grievance committee, did you inform him of the membership of that committee?

A. I do not believe so.

Q. In other words, the only connection he would have had with the committee would have been through you? A. Yes.

Q. Is that clear in your mind?

A. I believe that is right. I believe that is right.

Q. How many complaints altogether did you function on when you were chairman of the grievance committee, do you remember?

A. Oh, there were three that have been mentioned and I think there were two or three others in the next year or two.

Q. To your knowledge, is there any record of any one of those complaints available?

A. I have not seen them.

Q. Without mentioning the names, Doctor there was one that you considered which was rather serious, was there not, a disciplinary matter that came up?

(Testimony of Ralph W. Stevens.)

A. I did not know of any complaints handled by myself as chairman of the grievance committee that were serious. [1634]

Q. When were you on the board of trustees, or were you? A. I think it was 1953.

Q. Was there a rather more serious complaint against a doctor at that time?

A. I do not believe so. I cannot recall.

Q. Perhaps I can refresh your memory. Wasn't there a complaint against a physician here from someone with respect to whether or not he had made false statements in his application forms to the society? A. That was 1948, I believe.

Q. Oh, that was prior to this incident?

A. Yes.

Q. In what capacity were you acting at that time?

A. I was on the board of trustees then.

Q. Did the board of trustees hold a hearing on that particular complaint? A. Yes.

Q. What was their finding, if you recall?

A. They found that a false application had been made by this doctor stating qualifications and education which he did not have.

Q. What did that amount to, the false statement? What was the false portion of it?

A. He stated that he had had three years of surgery at the Mayo Clinic, and we found that he had never been there. [1635]

Q. Where did that complaint end? What was the final disposition of it?

(Testimony of Ralph W. Stevens.)

A. The board of trustees could take no further action, on advice of counsel.

Q. To your knowledge, Dr. Stevens, in all the time that you have been practicing in Walla Walla, has there ever been a disciplinary action against a doctor, actual disciplinary action?

A. How would you define "disciplinary action"?

Q. Well, strike that question, Mr. Oden.

Has there even been a hearing held before the membership of the society with respect to discipline of any member?

A. Not that I remember of.

Q. Has there ever been a hearing, prior to the Robinson matter, before the board of trustees of the society? A. Yes.

Q. Was that the incident you just described?

A. Well, that was one of them.

Q. What other ones were there?

A. The other one was a complaint against myself.

Q. When was that? A. In the fall of 1941.

Q. What disposition was made of that?

Mr. Kimball: Your Honor, I wonder if this isn't a [1636] little remote to the subject matter?

Mr. McNichols: Your Honor, my purpose is not to embarrass anyone here or cause any difficulty; it is merely to show that any complaints that have arisen in the society here, there is virtually no record of any of them and they all ended without any particular action, and that this is the first one

(Testimony of Ralph W. Stevens.)

in which there ever has been any proceeding, and I think it is material from that viewpoint.

Mr. Kimball: If the Court please, the record shows that this society was organized in '49 or '50 and the grievance committee was organized in 1950. I can't see the materiality.

The Court: All the organizations involved here, that is, I mean to say what is known as the bureau and the Walla Walla Valley Medical Society weren't in existence in 1941, were they?

Mr. McNichols: No; that is a point I can clear up, your Honor.

Q. Dr. Stevens, prior to the incorporation of the Walla Walla Valley Medical Society, what sort of an organization did you have here among the doctors?

A. Well, we had a county medical society that was unincorporated.

Q. Did you have bylaws and a constitution, and so on? A. Yes. [1637]

Q. Did those contain substantially the same provisions with respect to discipline?

Mr. Kimball: I object to that, your Honor. The best evidence of what the bylaws contain are the bylaws.

The Court: Yes.

Mr. McNichols: I am merely asking if there were such bylaws.

Q. Did you have such a constitution and bylaws?

A. Yes.

Q. Did the society, during that period prior to

(Testimony of Ralph W. Stevens.)

the time they were incorporated, have disciplinary proceedings authorized? A. Yes.

Q. And you are referring back to 1948 and such, you are referring to the same organization that you just mentioned, the Walla Walla society?

A. Yes.

Q. What disposition, Dr. Stevens, was made of the complaint you just mentioned?

Mr. Rosling: If your Honor please, I don't believe the Court has ruled upon the objection.

The Court: No. I don't believe it is necessary to go into detail on that. I will sustain the objection. You may have him testify that there has never been any expulsion or disciplinary action, as far as he knows, except this procedure. [1638]

Mr. McNichols: Very well, your Honor.

Q. Has there ever in your experience in Walla Walla, Dr. Stevens, ever been any situation where a doctor was either suspended or expelled from the society?

A. Since 1947 when I first came here, there has not been any. There may have been some before that.

The Court: I think that is going back far enough.

Q. (By Mr. McNichols): Well, Dr. Stevens, you returned from Chicago when?

A. October the 20th.

Q. You were present prior to that time at the September meeting when the grievance committee was discussed, were you not? A. Yes.

(Testimony of Ralph W. Stevens.)

Q. When you got back, were you informed by other members of the society of the so-called Brooks complaint? A. No.

Q. When did you first learn of it?

A. I learned about it the day I got back from Mr. Fullerton.

Q. Oh, Mr. Fullerton discussed it with you?

A. Yes.

Q. Did he inform you that there was to be a hearing held on it, and so on?

A. I think there had already been a hearing October the 11th, or the hearing of the complaint. I believe that he said [1639] the complaint was being transcribed and nothing could be done until it was returned, and that the board of trustees was handling it and the grievance committee had nothing to do with it.

Q. Mr. Fullerton testified yesterday—I believe you were in court—that he wrote a letter to the state association about the 17th of October and also had a conversation or communication with counsel respecting disciplinary procedures during that time. Was that at your suggestion, or do you recall?

A. I don't recall. I may have told Dr. Page that a state grievance committee had been authorized by the House of Delegates of the Washington State Medical Association in Spokane, in September, 1950.

Q. Had you attended that meeting?

A. No. I may have but I don't recall whether I did that or not at this time.

(Testimony of Ralph W. Stevens.)

Q. How did you happen to learn that?

A. I saw it in Northwest Medicine.

Q. Oh, I see. What was your reaction, Dr. Stevens, when Dr. Robinson proceeded to be critical of the grievance committee?

Mr. Kimball: When?

Mr. McNichols: I say, what was the reaction at the first meeting in September when he was critical of it? [1640] A. I was surprised.

Q. Subsequently, you became quite concerned about it, didn't you?

A. Well, as the controversy developed, I became more concerned.

Q. Was the part that you took in this controversy taken by you because of your feeling about the grievance committee, basically?

A. Yes; I had originated the grievance committee and had been quite seriously attacked, and I felt it was incumbent upon me to defend it.

Q. Subsequently, there was a motion presented to the society to abolish the grievance committee, wasn't there? A. Yes.

Q. And there was also an effort on behalf of Dr. Robinson to have a letter written to the Edwards withdrawing the former letter and, in effect, saying that they exceeded their authority?

A. Yes.

Q. Did you strongly resist any effort to have such a letter written? A. Yes.

(Testimony of Ralph W. Stevens.)

Q. And in doing so, your motive was again, the protection of this grievance committee, was it?

A. That was one of the reasons. [1641]

Q. But, actually, you knew nothing about the facts of the Edwards situation, did you?

A. The Edwards situation?

Q. The complaint about the child, you knew nothing about what the child had swallowed or what had happened other than what is set forth in that complaint?

A. Well, as substantiated by what Dr. Robinson told me.

Q. But you didn't talk to the people at all?

A. No.

Q. And, yet, you felt it incumbent upon you to strongly resist any effort of his to have a letter of correction sent out? A. Yes.

Q. Dr. Stevens, at several places during this proceeding, and particularly before the state grievance committee, you made statements to the effect that the seriousness of this Edwards complaint was in the fact that the Edwards family had threatened a lawsuit. Did you make such statements?

A. I may have mentioned it.

Q. Well, do you recall specifically mentioning it? A. Yes.

Q. And stating that to the state grievance committee as your main reason for acting as you did in this matter?

A. It was the main reason I finished the letter

(Testimony of Ralph W. Stevens.)

to the [1642] Edwards with the statement that the "little patient is none the worse for her experience."

Q. At the time you wrote the letter to the Edwards, did you have in mind this business about the possible lawsuit by them? A. Yes.

Q. Well, now, Dr. Stevens, where did you get that impression?

A. When Mr. Fullerton delivered this complaint to me, he told me that Mrs. Edwards had been fairly agitated about the situation and he said to me that she had told him that if the child had suffered an ill experience or possibly had died from swallowing this material and in not getting the prescription, that they had considered suing him. I realize Mr. Fullerton did not remember that when he testified yesterday.

Q. Well, then, you were basing your statements entirely on statements of Mr. Fullerton which he had made to you? A. Yes.

Q. Did it strike you as odd that he might have been discussing possible death of the child from swallowing Ex-Lax?

A. Well, I didn't think of it at the time. When children swallow things, most of the time you don't know what it is. [1643]

Q. There was some confusion all during this thing about what was swallowed, wasn't there?

A. That's right.

Q. You recognized that, did you not?

A. Yes.

Q. When you talked to Dr. Robinson on the

(Testimony of Ralph W. Stevens.)

street, did you and he discuss what had been swallowed by the child or what they stated had been swallowed? A. I think so.

Q. Was that where the confusion started? Did he have a different view?

A. I think he told me that the child had swallowed sulfa. I wasn't too concerned what the child had swallowed. It didn't make any difference, the child was all right.

Q. Now, what I am trying to pin down here is where this story arose originally about the Edwards being so concerned about a lawsuit. It is your testimony that you got it all from Mr. Fullerton?

A. Yes.

Q. And you presented that as one of your primary arguments to the state grievance committee, didn't you, the fact that a lawsuit had been threatened?

A. I think I only referred to it in connection with this last phrase in the last paragraph of the Edwards letter that I sent to the Edwards, referring to "the little [1644] patient is none the worse for her experience."

Q. Well, just to clear this thing up, I am quoting from your testimony at page 17 of the hearing before the state grievance committee, which is plaintiff's Exhibit 97. You made this statement:

"When this patient made the complaint to Mr. Fullerton, they were very upset. They were threatening to sue for malpractice and we were trying to

(Testimony of Ralph W. Stevens.)

keep from dragging this thing before the public for a matter of \$1.50, which he insisted upon.”

A. I think that is essentially what I said now.

Q. At page 21, you are testifying, Dr. Stevens:

“There is some doubt as to what the baby swallowed. It was a square pill and the mother said Ex-Lax. It wasn’t so much of what was taken, the reason for putting that in the letter to the Edwards family, there was no damage done, they considered bringing a malpractice suit regarding this matter and the child received no damage from the treatment or lack of treatment.”

Then the chairman asked this question:

“Was it your understanding that it was Ex-Lax the child had taken? [1645]

“Dr. Stevens: Yes.

“Chairman: And to take Epsom salts on top of that? That is the statement here.

“Dr. Stevens: That is what the complainant stated in her letter that Dr. Robinson stated that.

“Chairman: Did he give any reason why he was giving one cathartic on top another?

“Dr. Stevens: No. He had a very hazy impression of it.”

The thing I am concerned about, Dr. Stevens, is why didn’t you mention to those doctors who were hearing this thing this matter about the possibility of a poison being involved, rather than Ex-Lax?

A. I think I stated in the testimony that I didn’t think it mattered what the child had swallowed.

Q. Well, the doctors who were hearing this mat-

(Testimony of Ralph W. Stevens.)

ter were quite concerned about the statement in there that Dr. Robinson had prescribed a cathartic on top of a cathartic, weren't they? A. Yes.

Q. Wasn't that strongly considered by them at this time? A. I don't think so.

Q. Well, they discussed it at some length, didn't they, at the meeting? [1646] A. Yes.

Q. Is your answer yes? A. Yes.

Q. Dr. Stevens, did you take any part in the arrangements for the hearing before the trustees on the 21st of November, 1950? A. No, sir.

Q. Now, there was a meeting held, as I recall, Dr. Stevens, on the 20th of November, was there not? A. Yes.

Q. I will show you the minute book. I am referring to the meeting that was called——

A. Special meeting.

Q. ——at the request of Dr. Robinson.

The Court: When was that trustees' meeting held?

A. 21st.

The Court: 21st?

Mr. Sembower: 21st.

Mr. McNichols: Yes, your Honor, the trustees' meeting at which the hearing was held.

The Court: Yes, that was the one you referred to just recently?

Mr. McNichols: Yes.

I don't seem to find minutes for the meeting.

Mr. Kimball: That was the 20th, I think, Mr. McNichols. [1647]

A. Well, I recall the meeting.

(Testimony of Ralph W. Stevens.)

Mr. McNichols: Perhaps you can find it, Mr. Kimball. We seem to jump here. Oh, I see where we are.

Q. Well, in any event, Doctor, you remember the meeting? A. Yes.

Q. Do you know who set the date for that meeting, by any chance? A. No, I don't.

Q. Who normally did in the society set the date for the meetings?

A. I think the president did, probably, Dr. Page.

Q. The meeting of November 20, 1950, was the meeting at which the vote was taken on the continuance of the grievance committee? A. Yes.

Q. With the possibility of writing a letter to the Edwards. It has been the testimony here that the vote on the question of the grievance committee was 14 to 15, I believe? A. Yes.

Q. Does that sound accurate? A. Uh huh.

Q. Did you enter into the active discussion there? A. Yes.

Q. Did you know at that time there was a meeting set for the [1648] following night before the trustees on the Brooks' complaint against Dr. Robinson? A. I may have.

Q. Were you somewhat concerned, Dr. Stevens, at the vote at that meeting? A. Yes, I was.

Q. Did you feel that it was very likely that the existence of the grievance committee was jeopardized? A. Yes.

Q. And your subsequent actions in this controversy, were they influenced by that feeling?

(Testimony of Ralph W. Stevens.)

A. I believe so.

Q. Now, when was the annual meeting of that year?

A. December the 14th.

Q. December the 14th?

A. Uh-huh.

Q. You were quite agitated at the December 14th meeting, were you not?

A. Yes.

Q. Now, that was a meeting at which there was a guest speaker, was there not?

A. Yes.

Q. Were your associate members present there also?

A. I think so.

Q. Incidentally, to clear that, could you tell us the [1649] different kinds of members in the society? Are there active members?

A. Yes, there are active members who are in active practice and the doctors at the Veterans Hospital are courtesy members, more or less.

Q. How many of them are there?

A. They don't pay as much dues.

Q. How many of those courtesy members would you say there are?

A. Oh, about ten or twelve.

Q. Do they attend the annual meeting, normally?

A. Not all of them, they don't have a vote.

Q. Don't attend ordinary business meetings?

A. No.

Q. But they normally attend the annual meeting, do they?

A. Yes. There was a scientific meeting.

Q. Well, there has been some reference here, Dr. Stevens, to the statement you prepared and gave

(Testimony of Ralph W. Stevens.)

at the annual meeting on the 14th of December. In preparing and making that statement, were you motivated primarily by your concern about the grievance committee?

A. I was motivated primarily by that and also by the letter which Dr. Robinson sent to all the doctors the first part of December, 1950.

Q. His letter complaining about the grievance committee, and [1650] so on? A. Yes.

Q. He had gone into some detail in that letter criticizing the committee, hadn't he? A. Yes.

Q. Some of your remarks were probably a little indiscreet that night, were they not, Doctor?

A. I don't think so.

Q. Did you feel that they might be somewhat inflammatory with other members of the society in view of the fact that there was this next meeting scheduled for the next night?

A. I didn't place the two together at all at that time. I didn't consider the two, what effect it would have.

Q. You knew, however, of the meeting the next night, didn't you?

A. Which meeting was that again?

Q. Oh, wait a minute. Perhaps I am the one that is confused. I'm sorry, Dr. Stevens. This particular document wasn't given at that meeting of November 20th, it was at the December 14th?

A. No.

Q. What remarks, briefly, did you make at the November 20th meeting?

(Testimony of Ralph W. Stevens.)

A. Well, I again explained the function of a grievance [1651] committee, how it would improve public relations and how it would be effective if we had co-operation of the doctors in wanting to have the small grievances or disputes over fees settled amicably.

Q. Did you raise at that meeting some of the points you raised at a later meeting with respect to Dr. Robinson's having resigned from the bureau?

A. I don't believe so.

Q. Did you bring out that he wasn't co-operating with the grievance committee?

A. I pointed out he wasn't co-operating with it because he stated we had no business to ask him anything about his relationships.

Q. Now, he had substantial support in his objections to the grievance committee, did he not?

A. Yes, he did.

Q. And you had no rules or regulations to go by, did you? A. No.

Q. Did Dr. Bohlman ever function as a part of the grievance committee?

A. I believe he was invited to hear the original Brooks complaint, but that was when I was not in town, and I think after we were making up rules and regulations of the grievance committee, I gave him a copy of the ideas that I had and asked him to make any suggestions or [1652] changes, but we had never had any meeting of the full committee.

Q. Well, from the month of December, 1950, on,

(Testimony of Ralph W. Stevens.)

you felt a rather strong animosity toward Dr. Robinson, didn't you?

A. No, I didn't feel any animosity particularly.

Q. Did you feel animosity toward him the night you gave this paper or this discussion at the annual meeting?

A. It wasn't so much animosity as I was disgusted with him.

Q. Well, I don't like to go over this all again, but you did state something about the Russians being babes in the woods compared to Dr. Robinson?

A. Yes.

Q. That he had almost wrecked the grievance committee?

A. Yes.

Q. You accused him of distorting the facts?

A. Yes.

Q. And such as that. One thing that I am curious about, in that particular letter that we are discussing, the question of Dr. Robinson's attitude, you say, referring now to Plaintiff's Exhibit No. 384: "But what about providing a code of ethics? He further says"—I assume you are quoting Dr. Robinson—"but I cannot accept the right of anyone, doctor or layman, to get his hands on the private trade which I make with the patient whereby he and I decide how much of his labor [1653] will be traded for the labor of my services to him," and your statement, "The AMA would be interested to hear of this version of co-operation."

Did you inform the AMA of his version of co-operation?

A. No. I did not inform the AMA.

(Testimony of Ralph W. Stevens.)

Q. What was the purpose of that statement? What did you have in mind there?

A. The AMA was trying to promote better public relations and his statement that the medical profession had no business interfering with what he charged was against the principles of better public relations.

Q. Well, you thought he should co-operate with the grievance committee on a public relations angle?

A. Yes, that is why we set it up.

Q. It was a public relations committee, you felt?

A. Well, it was one of the functions of it, to promote better public relations.

Q. It didn't succeed very well in that, did it?

A. Would have if the dollar and a half letter had been followed.

Q. One thing, Dr. Stevens, I want to ask you before I forget, there has been some reference in the discovery proceedings here later on in this controversy about your writing to Dr. Benson of the state association and [1654] his writing to you about the rehearing on Dr. Robinson's case before the AMA.

A. Dr. Benson only received a copy of the letter I sent to Dr. Cunniffe.

Q. Oh, I see. And then did you receive correspondence from Dr. Benson about it?

A. No; he called me, I think.

Q. Oh, he telephoned you? A. Yes.

Q. What did you say to him and what did he

(Testimony of Ralph W. Stevens.)

say to you in that conversation? What was his status at that time?

A. He was president of the state association, and he said he received a copy of my letter and he thought it was very good and he agreed with it.

Q. That was the letter which you wrote to Dr. Cunniffe? A. Yes.

Q. And that was a letter written, I believe, February— A. 21st, I believe.

Q. February 21st of 1952, Plaintiff's Exhibit 169? A. Yes.

Q. Is that the letter to which you refer, Dr. Stevens? A. Yes.

Q. You had sent a carbon copy of that, then, to Dr. Benson? A. Yes.

Q. Go on with the conversation, briefly, between yourself and [1655] Dr. Benson.

A. Well, I told him that the members I had talked to of the society here felt that something should be done about it; that we felt that we were right in this controversy, and that we should appeal to the Judicial Council or to the board of trustees to have a rehearing.

Q. You thought you were right in the controversy about the grievance committee and such as that? A. Yes.

Q. Your purpose in writing this letter, which we will discuss a little later, was motivated again by your strong feelings about the grievance committee and that Dr. Robinson was after it?

A. Well, it was not only the strong feelings I

(Testimony of Ralph W. Stevens.)

the state grievance committee? A. I think so.

Q. Do you recall when you might have made such a suggestion, approximately?

A. Some time after November 22nd—or 21st meeting, I think. [1658]

Q. At the time you made that suggestion, did you have in mind the fact that the grievance committee vote at the meeting of November 20th was 14 to 15? A. I believe I would.

Q. I believe you testified also that, in your opinion—well, I will ask you the question: Did you during these proceedings feel that rather drastic action was necessary against Dr. Robinson in order to salvage the grievance committee set-up?

A. No, I didn't.

Q. Well, I am going to refer just a moment, Dr. Stevens, to page 70 of your deposition, which was taken in this case in January of this year, in which I proposed to you the following questions:

“Q. One of your primary concerns in writing that letter was the existence of your grievance committee, was it not? A. Yes.

“Q. And you felt that unless Dr. Robinson were expelled from the society, your grievance committee was endangered, did you not? A. Yes.”

Do you recall testifying to that effect?

A. Yes, I do.

Q. Was that your feeling at that time? [1659]

A. Well, it wasn't the primary reason, it was one of the primary reasons.

Q. One thing I wanted to mention, Dr. Stevens,

(Testimony of Ralph W. Stevens.)

are you familiar with the letter which Dr. Pratt wrote to Dr. Louis Robinson, the father of the plaintiff? A. I never saw it.

Q. Do you recall any discussion where the question was brought up as to whether or not it would be advisable to write to his father? I am referring now to Plaintiff's Exhibit 114. Do you recall ever having seen that letter?

A. No, I have never seen this letter.

Q. Well, that letter bears the date of May 24th and is signed by Dr. Pratt. Do you recall the expulsion meeting was on the 22nd? A. Yes.

Q. Did you, Dr. Stevens, attend any meeting other than the expulsion meeting at that approximate date? A. No, I didn't.

Q. Did you ever hear of such a meeting having been held? A. No, I haven't.

Q. Now, there is one question I wanted to ask you, too, Doctor, about the hearing before the state committee in which you were answering questions put to you by the chairman of the state grievance committee in which—— [1660]

The Court: Let's see, what was the date of that?

Mr. McNichols: This was a meeting held on the 22nd of April, your Honor, 1951, before the state grievance committee.

The Court: Yes.

Mr. McNichols: (Reading):

“Dr. Calhoun: I believe you stated there was no co-operation by Dr. Robinson with the committee?

“Dr. Stevens: Yes.

(Testimony of Ralph W. Stevens.)

“Dr. Rownd: And you had a discussion in a regular meeting about this case before the letter was written?”

“Dr. Stevens: Yes.”

Q. When you made that statement, Dr. Stevens, were you referring to the informal discussion you had with Dr. Yengling about the Edwards complaint? A. I don't understand your question.

Q. Well, the question I had was you were asked at the state grievance committee by Dr. Rownd: “And you had a discussion in a regular meeting about this case before the letter was written?”

A. Yes.

Q. And you answered “Yes.” Now, that regular meeting he was referring to, were you referring to the informal conversation you had with Dr. Yengling prior to writing the letter to the [1661] Edwards?

A. No, I was referring to the society meeting of September 26, 1950, which came four or five days later after I had talked to Dr. Robinson on the street.

Q. Was the writing of the letter discussed at that meeting?

A. No, I wrote the letter a day or two—a couple of days after the meeting.

Q. Oh, I see. The letter, it wasn't brought up then? A. No.

Q. Or the merits of the complaint?

A. No, just the question of the grievance com-

(Testimony of Ralph W. Stevens.)

mittee and Dr. Robinson's statement of whether he would co-operate with it.

Q. But none of the merits of the Edwards complaint were discussed at that meeting?

A. No.

Q. I am going to show you now, Dr. Stevens, Plaintiff's Exhibit 169, which purports to be a letter dated February 21, 1952, directed to Edward R. Cunniffe, chairman of the Judicial Council of the AMA, and purportedly signed by you. Would you examine that exhibit? A. I know the letter.

Q. That is a letter which you wrote to Dr. Cunniffe on that date? A. Yes, sir.

Q. On the third page of that letter it is indicated that a [1662] copy was sent to Dr. John W. Cline, President of the AMA, and Dr. R. A. Benson, President of the Washington State Medical Association. Did you also send carbon copies to those people?

A. Yes, I did.

Q. How did Dr. Cline figure in the picture?

A. Well, he was president of the American Medical Association.

Q. Had he taken any part in this proceeding at any time to your knowledge? A. No.

Q. What was your purpose in sending a copy of this to Dr. Cline?

A. Well, the purpose was that we felt, or I felt, that the action of the Judicial Council was entirely wrong in that they did not consider the proper evidence and judged the case improperly.

Q. You felt that you should inform Dr. Cline of

(Testimony of Ralph W. Stevens.)

that? A. Yes, I felt it was important.

Q. You, in fact, went much further in the letter, though, in discussing this matter than that point of view? A. Yes——

The Court: I didn't hear your question.

Q. (By Mr. McNichols): I say, you went much further than that in the letter which you [1663] wrote? A. No, I don't believe so.

Q. Reading from paragraph two of Exhibit 169, Dr. Stevens, it reads as follows:

“In August, 1950, a minor complaint against Dr. Robinson was filed and an attempt was made to settle this amicably, but he refused to co-operate claiming the grievance committee had no right——”

The Court: Paragraph two, is it?

Mr. McNichols: I am reading from paragraph two, your Honor.

The Court: All right.

Mr. McNichols: (Reading continued):

“He made the complaint even more serious by attempting to blackmail relatives of the complainant to obtain the original letter the grievance committee sent to dispose of the complaint.”

Q. Did you feel that the president of the American Medical Association and the president of the state medical association should be informed of your opinion that Dr. Robinson was a blackmailer?

A. I wanted them to understand what the situation was in the background of this case that the Judicial Council sat on. [1664]

Q. Excuse me, were you finished?

(Testimony of Ralph W. Stevens.)

A. That the Judicial Council took on Dr. Robinson's appeal.

Q. Well, the Judicial Council and the State Medical Association had complete transcripts of this whole transaction, didn't they?

A. They had not received any answer from the Judicial Council about the case except the telegram, I believe.

Q. No, but I mean prior to the time you wrote this letter, which was February 21, 1952, both the state association and the Judicial Council of the AMA had complete files on the case, did they not?

A. I should think so.

Q. You also indicated in this letter, did you not, Dr. Stevens, that Dr. Robinson had made false statements all through this proceeding?

A. Yes, I did. I can point them out to you at this time.

Q. And you were taking it upon yourself to judge the merits of the whole controversy, however, weren't you, in this letter? A. No, I wasn't.

Q. Well, you made a statement of fact to the effect that he was lying and that he was a black-mailer?

A. I felt that they gave undue consideration to some of Dr. Robinson's claims.

Q. Your purpose in writing this letter was to influence Dr. [1665] Cunniffe, was it not, in his decision on this matter?

A. Well, I hoped for a rehearing either by the

(Testimony of Ralph W. Stevens.)

Judicial Council or by the Board of Trustees of the American Medical Association.

Q. And you were successful in obtaining that one way or another, were you not? A. Yes.

Q. You concurred, didn't you, Dr. Stevens, in the decision that the society should seek a rehearing on the Robinson matter? A. Yes.

Q. Now, this letter to which I have been referring is signed by you as chairman of the Walla Walla Valley Medical Society Grievance Committee? A. Yes.

Q. And you state in the last sentence of the introductory paragraph: "I would like to give you our reaction to this decision."

To whom were you referring in the plural there, to the other members of the committee?

A. Some of the other members of the society.

Q. Of the society? A. Uh-huh.

Q. Are you familiar enough with the letter?

A. Yes. [1666]

Q. To whom did you show this letter prior to the time you sent it?

A. I don't believe I showed it to anybody.

Q. Did you discuss the wording of it with other members of the society?

A. I think I told Dr. Tompkins that I was planning to send it.

Q. Did you indicate to him the contents of it?

A. Roughly.

Q. What did he say?

A. He thought it would be all right.

(Testimony of Ralph W. Stevens.)

Q. He concurred that it should be sent?

A. Yes.

Q. You also—— A. He had no objection.

Q. Did you also inform him you were going to send a copy to the president of the AMA?

A. Yes.

Q. Did you discuss it with any other member of the society? A. No.

Q. Did you discuss it with Dr. Yengling?

A. No.

Q. He was still on the grievance committee, wasn't he?

A. I don't know whether he was on at that time or not.

Q. In any event, you didn't discuss it with any other member [1667] of the grievance committee?

A. No.

Q. However, you did sign it as chairman of the grievance committee?

A. That was my official title.

Q. You testified on deposition, however, that you did show it to someone else, didn't you? Have you looked at your deposition recently?

A. I haven't looked at it. Dr. Tompkins might have seen it.

Q. If I am not mistaken, you testified on your deposition that you had a discussion with Dr. Yengling. A. Well, I don't recall, I may have.

Q. At that time in your deposition taken in January, I asked you the question:

“Q. Did you consult with other members of the

(Testimony of Ralph W. Stevens.)

local grievance committee prior to writing this letter?"

Having reference to the Cunniffe letter.

You said:

"A. I consulted with Dr. Yengling.

"Q. Did you discuss it with all the other members of the grievance committee? A. No."

However, it is your testimony that you showed it to Dr. Tompkins, probably, and no one else? [1668]

A. Yes.

Q. You were present, Dr. Stevens, at the meeting of May 22nd, 1951, the expulsion meeting?

A. Yes, sir.

Q. Were you present all through the meeting?

A. Yes, sir.

Q. What lay persons appeared at that meeting, if you recall?

A. Mr. Noel Edwards was there.

Q. Was he the only one? A. I think so.

Q. Do you know how he happened to be there?

A. I don't know whether Dr. Robinson asked him to come or not. He said something about refuting the whole thing in a few minutes.

Q. Do you recall Dr. Robinson at that time distributing copies of a page from the record of the hearing before the state grievance committee?

A. I have a faint recollection of it.

Q. Did you examine it at that time?

A. I think so.

Q. You think maybe Dr. Robinson had Mr. Edwards come?

(Testimony of Ralph W. Stevens.)

A. I think so. It was about his testimony that there was some conflict, I believe.

Q. However, in any event, he was the only witness that appeared? [1669] A. Yes.

Q. Did the membership of the society ever hear any of the other witnesses in this matter?

A. No.

Q. Do you remember what Noel Edwards testified to in the May 22nd hearing?

A. It was, as I recall, the use of the word "syphilis," whether Dr. Robinson used the word "syphilis" or "virus," and I do not recall exactly what he said at this time.

Q. How long did that meeting last, Dr. Stevens? Approximately, if you recall?

A. About three hours, I guess.

Q. It was comparatively a long meeting, wasn't it? A. Yes.

Q. Do you recall being at meetings of the society during this controversy when assessments were discussed with respect to paying for the Robinson case? A. Yes.

Q. How many times did that happen, do you know?

A. Oh, I think only one assessment of \$6.46 was made prior to his expulsion.

Q. Was that discussed in open meeting?

A. I don't remember whether it was or not. I imagine the reason for it was probably discussed, for court reporter expenses, I believe. [1670]

Q. It was referred to, was it not, in effect, as the

(Testimony of Ralph W. Stevens.)

Robinson assessment or the assessment in the Robinson matter?

A. I think they understood what it was for.

Q. Was there some feeling among the doctors against such a thing, paying the assessment?

A. Well, the amount was very small. I don't know, some probably would be affected by it.

Q. Did you feel it was somewhat of a burden to have to pay for it?

A. No, I didn't think it was a very large amount.

Q. Well, during this controversy, Dr. Stevens, when it became apparent that some drastic action was being considered, as you took part in it did you have in mind the fact that it could have a substantial effect on the entire future of Dr. Robinson?

A. Yes, I did.

Q. Were you aware at the time that if it went as far as expulsion, that it would deprive him of any hospital privileges in this city?

A. Yes, I did.

Q. That was common knowledge among the members of the society, was it not? A. Yes.

Q. And you, during this period, were further aware of the [1671] fact that the loss of those hospital privileges would be extremely damaging to any physician, were you not?

A. It would have some damage, although as I testified in my deposition, doctors were practicing in Walla Walla who hadn't hospital privileges.

Q. There seems to be some question about that. Did you find that in your deposition?

(Testimony of Ralph W. Stevens.)

A. No, it wasn't in there, but I remember putting it in and I objected to leaving it out of my deposition and my counsel remembers that I testified about it.

Q. Well, in any event, you had that over-all picture in mind during this proceeding?

A. Yes.

Q. Who else spoke at the meeting of May 22nd, Dr. Stevens, if you remember?

A. I would have to look at the minute book.

Q. Do you recall Dr. Robinson being asked to leave the meeting? A. Yes, I do.

Q. Approximately how long was he out, if you recall?

A. Oh, for about forty minutes, at least.

Q. Was there a discussion going on during his absence? A. Yes.

Q. These minutes are somewhat lengthy, Dr. Stevens. They run twenty pages or more. A lot of this is the reading [1672] of the recommendations.

A. Yes, I understand.

Q. See if there is any reflection in the minutes as to who spoke or what was said during his absence.

A. This was during his absence, you mean?

Q. Well, at one point here he was excused from the hearing. I am referring, for the record, to the minutes of the meeting of the Walla Walla Society on May 22nd, 1951, as contained in Defendants' Exhibit 447.

A. You mean who spoke while he was gone?

Q. Yes, and what was said. A. Oh——

(Testimony of Ralph W. Stevens.)

Q. It may not be reflected there, I don't know.

A. I don't think there is very much in here.

Q. Do you of your own recollection recall who spoke at the meeting?

A. Well, several motions were made and an amendment to the motion was made.

Q. Who, if you recall, Dr. Stevens, made the motion to expel Dr. Robinson?

A. Dr. Page amended the motion to suspend him and the amendment carried and the motion carried.

Q. Were the doctors informed during the meeting that Noel Edwards had made conflicting statements with respect to what Dr. Robinson had said previously? [1673]

A. Yes, I believe so.

Q. One thing, Dr. Stevens, do you recall the approximate time that the telegram was received from the AMA on the first appeal? In general?

A. Some time around the 1st of February, 1952, I believe.

Q. Well, then there was, was there not, a concerted effort in meetings of the society to obtain a rehearing?

A. Not at that time. We didn't know why the society action was reversed and I think the efforts at that time were to find out from the judicial council where we were at fault, whether we should have to go back and reprocess some of the technical features of the Robinson case.

Q. Was the telegram from Dr. Cunniffe announcing that Dr. Robinson's appeal had been sustained read to the membership?

(Testimony of Ralph W. Stevens.)¹

A. I don't recall.

Q. Did you take an active part yourself in the attempts to obtain a rehearing?

A. Not any other than the letter I wrote to Dr. Cunniffe and Dr. Cline and Dr. Benson, the same copy which you have just referred to.

Q. Did you yourself, Dr. Stevens, question the authenticity of that telegram from Dr. Cunniffe?

A. Well, it wasn't so much the authenticity of the telegram, [1674] but the telegram referred to the expulsion of Dr. Robinson from the Washington State Medical Society and we knew he hadn't been expelled from the Washington State Medical Society because we had expelled him.

Q. Wasn't he automatically expelled from the state association?

A. I imagine it would automatically follow, but——

Q. But, in any event, there was no question in your mind but what the telegram came from Dr. Cunniffe, the chairman of the Judicial Council?

A. I don't think—telegrams usually aren't signed in ink.

Q. No, of course not. Did any other officials of the society, to your knowledge, indicate that they questioned the authenticity of the telegram and the name that appeared thereon?

A. Oh, some of them may have.

Q. Do you recall any specific person?

A. No, I don't.

Q. Do you recall, Dr. Stevens, some time between

(Testimony of Ralph W. Stevens.)

the receipt of that telegram and the rehearing Dr. Tompkins playing a recording of a telephone conversation in a meeting?

A. I didn't recall it when you asked me that in my deposition, but I heard enough about it since then that I think I was at the meeting and I recall something.

Q. It appears in the minutes somewhere, if I can find it. [1675]

A. It was a very poor recording and I don't think I heard very much of what it said or it would have made more impression on me.

Q. Reading from the minutes of the society meeting of April 8th, 1952, as contained in Defendants' Exhibit 447:

"The president called the meeting to order, advising the society that Dr. Tompkins had a recording of his recent telephone conversation with Dr. Howard, assistant secretary of the AMA, relative to the proper procedure in petitioning the Judicial Council for a rehearing in the Robinson matter. Dr. Tompkins presented the transcript for the information of the members present."

Do you recall hearing that recording?

A. Yes, I think so.

Q. Could you hear it, or was it so bad you couldn't understand it?

A. Well, as I said, I didn't understand very much of it.

Q. Did it appear to be a conversation between Dr. Tompkins and this Dr. Howard?

(Testimony of Ralph W. Stevens.)

A. I assume so.

Q. But you can't tell us anything that was said in the conversation? [1676] A. No.

Q. I assume that you could hear the name of Dr. Robinson mentioned in the conversation?

A. I don't remember.

Q. Well, then, do you recall what individuals in the society took the active part in this petition for rehearing? A. The board of trustees.

Q. The board of trustees of the society in 1951?

A. Yes.

Q. Or would that have been '52?

A. '52, I believe, yes.

Q. And I believe Dr. Tompkins took quite an active part, did he not?

A. He was the president the year before in '51. He was still on the board.

Q. To refresh your memory, I think Dr. Keyes was president in 1952.

A. Dr. Tompkins was still on the board of trustees.

Q. If you remember, did the society authorize the various officials to go to the Los Angeles hearing and the Chicago hearing?

A. I believe so.

Q. And do you know how their expenses were handled? Were they taken care of by the society?

A. I think so. [1677]

Q. And I believe you testified previously that the state association concurred in the attitude of the

(Testimony of Ralph W. Stevens.)

society that they should seek a rehearing on this matter?

A. Just Dr. Benson in his telephone conversation to me.

Q. Have you ever been on the board of either of the hospitals, Dr. Stevens?

A. I have been on the board of St. Mary's Hospital.

Q. By the board, that is the board of directors, is it? A. It is the staff board.

Q. Staff. They are all physicians?

A. Yes.

Q. How are they chosen?

A. I think they are elected by the staff.

Q. By the staff of the hospital?

A. Of the hospital, yes.

Q. The staff includes, I assume, all members of the society in good standing?

A. Who are on the staff of that hospital, who are on the active staff of the hospital.

Q. What does it require to be on the staff?

Mr. Smith: Your Honor, I think the exhibit speaks for itself in that regard. They have introduced the exhibit of the constitution and bylaws of the staff. I would suggest that the exhibit speaks for that, rather than the witness.

Mr. McNichols: I am merely trying to set background, [1678] Mr. Smith, to get a general idea of how this thing operates.

The Court: The best evidence would be their constitution and bylaws.

(Testimony of Ralph W. Stevens.)

Mr. McNichols: Yes, your Honor. I won't pursue it on that basis.

The Court: Unless you want to show his knowledge of what they show. I think that is already presumed.

When do you have your elections, Doctor, to the medical society?

A. They usually were the last month of the year in December.

The Court: December?

A. Yes.

The Court: And you elect your officers for just a year?

A. Yes.

The Court: How many trustees were there?

A. Well, there is the president, the vice president, the secretary-treasurer, and two other trustees.

The Court: I see. The officers are ex officio on the board of trustees?

A. Yes.

The Court: Is the retired president a member of the board, the immediate past president?

A. I think the new constitution provided that.

The Court: And are the trustees elected for just one-year [1679] terms?

A. One year.

The Court: Let's see, Dr. Page was president in 1950, and Dr.—

A. Tompkins.

The Court: —Tompkins in 1951?

A. Yes.

(Testimony of Ralph W. Stevens.)

The Court: And Dr. Keyes in 1952?

A. '52.

The Court: All right, go ahead.

Q. (By Mr. McNichols): Do you recall, Dr. Stevens, a letter written by Dr. Morton Tompkins to Mr. E. B. Howard, assistant secretary of the AMA, in April of 1952?

A. I don't think I ever saw it. I heard it referred to in this action.

The Court: Dr. Yengling was on the grievance committee with you, he was a trustee, too?

A. No, he wasn't.

The Court: He has never been a trustee?

A. He has at other times.

The Court: Not during this period?

A. No, sir.

Q. (By Mr. McNichols): He was, incidentally, along that line, on the state grievance committee actually, wasn't he? [1680]

A. He was on the state grievance committee.

The Court: Oh, yes, I remember that testimony, yes.

Q. (By Mr. McNichols): This is the letter I was referring to, Plaintiff's Exhibit 206.

A. Yes, I have never seen this letter before except in the trial here.

Q. This was written by Dr. Tompkins, apparently on behalf of the society, and the last sentence of paragraph one, he says:

“Should the Judicial Council decide to let the

(Testimony of Ralph W. Stevens.)

decision stand, the local society wishes to act at once.”

Do you recall the local society discussing in a meeting what they would do in the event that wasn't upheld—in the event this was affirmed?

A. I think that they were probably thinking of appealing to the trustees of the American Medical Association.

Q. Oh, I see. The trustees are a separate body from the Judicial Council?

A. Yes, they are over the whole group, they are over the whole body or Councils of the American Medical Association, except the House of Delegates.

Q. Was there discussion after the second ruling about appealing it to the trustees of the AMA?

A. No. [1681]

Q. They just proceeded to reinstate Dr. Robinson after that? A. Yes.

Q. Was there any discussion, to your knowledge, after the rehearing, Dr. Stevens, of starting all over again in their proceedings against Dr. Robinson?

A. The first Judicial Council hearing?

Q. No, after the second decision or between the two decisions, was there any discussion in society meetings about starting over again in the process of disciplining Dr. Robinson?

A. I think there was some discussion in the board of trustees, since we had never obtained a very good idea of what was wrong with our disciplinary action until some time after the telegram was received.

(Testimony of Ralph W. Stevens.)

Q. Well, the action itself was wholly unique, these proceedings you followed in this disciplinary proceeding?

A. Well, it was unique only in that the state grievance committee had entered the picture.

Q. Well, the action of your grievance committee originally was unique, wasn't it?

A. Well, there had never been one before.

Q. And the action of the state grievance committee was unique? A. For the same reason.

Q. In fact, do you know of your own knowledge whether there [1682] had been any disciplinary appeal to the Judicial Council of the AMA in the two years preceding that period?

A. I wouldn't know.

Q. I will be through in a minute, Dr. Stevens. I was going to ask you one thing, have you ever remarked to people about your impressions of Dr. Robinson's mental capacity? A. Yes.

Q. What did you say?

A. At what time do you refer?

The Court: If this is impeaching, I think specifically the time and to whom he said it should be pointed out, unless you want to get an admission he said it generally.

Mr. McNichols: I wasn't thinking particularly of impeaching at this time, your Honor.

The Court: Oh, all right.

Q. (By Mr. McNichols): Perhaps I can refer you to the part I am thinking of, Dr. Stevens, and

(Testimony of Ralph W. Stevens.)

I am not doing it for impeachment but merely to refresh your memory.

The Court: I think I overlooked that this is an adverse witness. You can bring out anything that you can bring out that is material, of course.

Q. (By Mr. McNichols): Referring to your deposition, Dr. Stevens, if this will assist you in point of time, which was taken in January of this year: [1683]

“Q. Well, then, what did you say to these people?

“A. Well, everybody knew what came out of the fuss and discord that he had caused and people were surprised that he brought suit against the local society, and when they asked me about it, I just said, ‘Well, I don’t think that you can blame the man too much personally because I don’t think he is well.’

“Q. You were inferring that he was mentally unbalanced? A. Possibly.

“Q. Did you tell these people that he was crazy?

“A. No.

“Q. Did you tell them he was suffering from mental delusions? A. Yes.

“Q. Did you tell them he was paranoid, in your opinion? A. Possibly.

“Q. To whom did you tell the things?

“A. I don’t know, casual acquaintances.

“Q. Various people? [1684] A. Yes.

“Q. On numerous occasions?

“A. No, not numerous.

“Q. On several occasions?

(Testimony of Ralph W. Stevens.)

“A. Several occasions.

“Q. Had you made such remarks to anyone prior to this controversy?

“A. Which controversy?

“Q. The controversy which Dr. Robinson had with the local society and various individuals.

“A. No.”

Does that sound——

A. Yes, I recall that testimony.

Q. Had you ever made such observations, Dr. Stevens, before this dispute arose?

A. No, I hadn't.

Q. They were all made either during or after this dispute?

A. They were probably made after Dr. Robinson brought suit against us in Superior Court. People would ask me why is he bringing the suit against me, and I would tell them, “I think he is suffering from persecution complex.” If they were a doctor or a dentist or somebody who knew something about medicine, I might say, “I think he has paranoid symptoms.”

Q. You don't consider yourself an expert on psychiatry by [1685] any means, do you?

A. No, I don't.

Mr. McNichols: I think that is all, Dr. Stevens.

Mr. Kimball: No cross.

Mr. McNichols: Your Honor, there is one question about some of the defendants we might wish to call with respect to damages at a later time. I suppose they can be excused——

The Court: You may reserve that right.

Mr. McNichols: Yes.

The Court: They will be available.

Mr. McNichols: Yes, that is all, Dr. Stevens.

(Witness excused.)

Mr. Sembower: I will ask Dr. Morton W. Tompkins to take the stand.

MORTON W. TOMPKINS

called as an adverse witness by the plaintiff, being a defendant herein, and being first duly sworn, was examined and testified as follows: [1686]

* * *

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Morton W. Tompkins.

Q. What is your address, Dr. Tompkins?

A. 505 Craig Street.

Q. And what is your office address?

A. My residence.

Q. And what is your office address?

A. 120 East Birch.

Q. And what is your profession?

A. Physician and surgeon.

Q. Do you have any specialties, Dr. Tompkins?

A. Yes.

Q. What are those, please? [1687]

A. Obstetrics and gynecology.

Q. What official positions have you held in the

(Testimony of Morton W. Tompkins.)

Walla Walla Valley Medical Society, Dr. Tompkins?

A. I have been a delegate to the state House of Delegates.

Q. When was that?

A. I am not sure of the exact dates. I believe the first time was approximately in 1942. I may or may not have been a delegate later.

Q. How long is the term for a delegate?

A. One year.

Q. One year. You do recall the one term, but you think you may have served another term?

A. I am not sure about just after the war.

Q. Any other positions?

A. I have been a member—I was secretary of the society two years during the war years. I have been a member of the board of trustees and president of the society and, as past president, a member of the board of trustees.

Q. Would you give us the dates for those as nearly as you remember?

A. I am not sure how many years I served as member of the board of trustees prior to 1949, but I believe it was one. In 1949, I was a member of the board of trustees. I was elected as president of the society December 14, 1950, became past president the second Thursday in [1688] December of 1951, and was a member of the board of trustees until the second Thursday of December, 1952.

Q. And as president, you served what term?

A. The calendar year 1951.

(Testimony of Morton W. Tompkins.)

Q. I believe you are installed on the second Thursday of December, is that not correct?

A. Of the previous year, yes.

Q. And that would be the second Thursday of December, '51, when you began your term?

A. No, '50.

Q. '50, and then you ended your term the second Thursday of December in '51? A. Correct.

Q. Who succeeded you as president, Dr. Tompkins?

A. Excuse me, did you say precede or succeed?

Q. Succeeded you?

A. Dr. Keyes succeeded me.

Q. And your predecessor was Dr. Page?

A. Correct.

Q. Now, what positions have you held in the Walla Walla Valley Medical Service Bureau since January 1st, 1950, or in connection therewith?

A. You may correct me on this, but I don't believe I have had any.

Q. Well, now, I noticed in the bureau minutes that on [1689] February the 28th, 1950, there is a notation that you were elected director of the Walla Walla area in the Washington Physicians Service Corporation. A. Yes.

Q. Is that related activity to the bureau?

A. Only indirectly. Before the laws were changed in the state of Washington, in order for the bureaus to operate they had to have a backing insurance company, and just about this time the laws of the state were changed so that that was no longer

(Testimony of Morton W. Tompkins.)

necessary and the insurance company was liquidated, and I think that I was the so-called area representative to vote the proxies of the stockholders at that liquidation.

Q. I see.

A. It involved, if I recall correctly, it involved one meeting in Seattle and merely to hold the vote to liquidate, and that was all.

Q. Was that a program carried out under the direction or chairmanship of Dr. Berge, if you recall?

A. I could not answer that.

Q. And then were you elected in May, 1952, a member of the—is it the title governor of the fourth district of the Medical Defense Fund?

A. That was '52.

Q. '52, yes, according to my information. [1690]

A. There seemed to be some confusion about that particular thing. I was notified that I had been elected as governor of the fourth district of the Medical Defense Fund, and yet I got no information about any cases that were pending or lawsuits for malpractice that were being filed, and finally about a year later it came out that apparently an error in the office, I was sent the appointment approved by the board of trustees, but the person who was retiring was never notified that he had been retired and he had been carrying on all the business in the meantime, so my membership just automatically dropped.

Q. I see.

(Testimony of Morton W. Tompkins.)

A. However, I was elected officially to that position.

Q. I noticed also in the minutes of the bureau for January the 3rd, 1950, that you were named chairman of the building committee of the bureau?

A. No, that is incorrect.

Q. What was that post?

A. At that particular time, the doctors in this area were interested in investigating and perhaps promoting a medical center building. I was elected chairman of that committee to conduct the investigations and we had a number of meetings on that. It was not a function of the bureau, nor was it a function of the medical [1691] society. It was a function of a group of interested doctors, although all of the members did belong, I think, both to the bureau and to the society, because all of us belonged to both at that time.

Q. I see. I believe that Dr. Sam Page was vice president or vice chairman, Dr. Balcom Moore was secretary and treasurer, and Charles Fullerton was business manager; is that correct according to your recollection?

A. I don't recall, but it could be.

Q. Was the building ever carried out?

A. No, the Korean War came along and it folded.

Q. You were present, I believe, at most, if not all, of the conferences at which significant action was taken with respect to Dr. Robinson, were you not?

A. I believe so.

(Testimony of Morton W. Tompkins.)

Q. On August the 29th, 1950, there was the meeting of the bureau at which Dr. Robinson's resignation was accepted. Were you present at that meeting, if you recall?

A. I don't recall that meeting.

Q. Then on October the 11th, 1950, there was the extraordinary meeting of the board of trustees and members of the board of the trustees and grievance committee on the date that the complaint was taken from Tom Brooks. Were you present there?

A. Yes. [1692]

The Court: What mention did you make of the grievance committee in connection with that?

Mr. Sembower: That the meeting among the doctors who were assembled at that meeting to take a statement from Tom Brooks, apparently there were members of the trustees and members of the grievance committee and possibly others. I don't know exactly how it was selected.

The Court: In connection with the Brooks complaint?

Mr. Sembower: Yes.

The Court: I was under the impression that the grievance committee of the local society had never acted, as such, in the Brooks matter.

Mr. Sembower: I think that is true and never acted as such. This meeting——

The Court: What is your basis for your statement, then, that the grievance committee participated in the meeting of October 11th?

Mr. Sembower: What I meant to say was that

(Testimony of Morton W. Tompkins.)

this meeting at which members of the trustees and grievance committee attended.

The Court: Oh, well, yes. Some of the members of the grievance committee were trustees, is that what you mean to say?

Mr. Sembower: Yes, that is correct.

Mr. McNichols: Your Honor, I might make it clear, the [1693] trustees were at that meeting and also the members of the grievance committee were at the meeting with the trustees.

The Court: Do the minutes show that?

Mr. McNichols: Yes, sir.

The Court: I see.

Mr. McNichols: All but Dr. Stevens, who was out of town, I believe.

The Court: Oh.

Q. (By Mr. Sembower): And then there was the meeting on November the 9th, which was the trustees' meeting held after the regular meeting which decided to go ahead with the Brooks complaint. Did you attend that, if you recall?

A. Yes.

Q. And then there was the meeting of November the 20th, 1950, which was called after Dr. Robinson presented the requests of the requisite number of doctors, and they voted 15 to 14 against a motion to abolish the grievance committee. Were you present there? A. Yes.

Q. And then the next night the meeting was held which voted to refer Dr. Robinson's case to the new state grievance committee. Did you attend that?

(Testimony of Morton W. Tompkins.)

A. Mr. Sembower, I believe you have your dates correctly. Would you state that again?

Q. November the 21st. [1694]

A. Would you please state your question again, please?

Q. Well, that was a meeting which was held and it was voted at that meeting to refer Dr. Robinson's case to the state grievance committee?

Mr. Kimball: I don't believe that is correct.

A. That is incorrect. November 21st was the hearing before the board of trustees.

Q. (By Mr. Sembower): What is your recollection of that meeting?

Mr. Kimball: Which one?

Mr. Sembower: Well, of November 21st.

Q. Did you attend a meeting on November 21st?

A. I did.

Q. And what was that meeting, if you recall?

A. That was a meeting of the board of trustees, at which time Mr. Brooks presented his complaint and Dr. Robinson presented his defense. There were other witnesses heard.

Q. Yes. But you were in attendance at that meeting? A. Yes.

Q. Then there was a meeting of December the 13th, which was a meeting of the trustees of the Walla Walla Valley Medical Society which passed the resolution to refer the Robinson matter to the grievance committee of the Washington State Medical Association. Were you present there? [1695]

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Then there was the annual meeting, I think the next night, December the 14th. Were you present at that meeting? A. Yes.

Q. That was the meeting where Dr. Stevens delivered his speech? A. Yes.

Q. To which he testified a little while ago?

A. Yes.

Q. Do you remember the occasion of Dr. Stevens' speech?

A. Do you mean in the procedure of the business of the evening?

Q. Yes, do you remember him giving a speech?

A. Yes.

Q. Do you remember generally what he said there?

A. No, I don't. It has been refreshed somewhat by, I believe, some evidence presented here, but as far as my memory of what he said at that time, no.

Q. Do you remember what the reaction of the audience was, the members of the society there in attendance, to Dr. Stevens' speech? Was it favorable or unfavorable?

A. I couldn't say. I don't recall that at all, because I believe somebody else, if I am not mistaken, Dr. Robinson, had the floor immediately thereafter. [1696]

Q. Well, I just, of course, was asking you about the reaction to Dr. Stevens' remarks, if you recall?

A. Well, I would have no opportunity to get any reactions other than my own, because it was in the middle of a meeting. If Dr. Robinson—I am sure

(Testimony of Morton W. Tompkins.)

that Dr. Robinson took the floor immediately after Dr. Stevens stopped talking and there would be no chance for any reactions.

The Court: I was just wondering what you mean by reactions? Did they applaud or look pleased?

Mr. Sembower: That's right, that is what I am wondering. It was a very strong speech and I just wondered if there was muttering or any attitude that you noticed there?

A. There was some laughter.

Q. Applause?

A. There was some laughter.

Q. There was laughter? A. Yes.

Q. Was there applause? A. No.

Q. Did anybody besides Dr. Robinson answer the speech, as you recall?

A. I couldn't say for sure.

Q. Then there was a meeting of March 27, '51 of the local [1697] society to approve the grievance committee rules. Did you attend that meeting?

A. Yes.

Q. That was the one which later was held over again, wasn't it? Or, rather, they rescinded the action there about the grievance committee rules?

A. I'm sorry, I don't understand your question.

Q. Well, at that meeting, action was taken with reference to the grievance committee rules, is that correct? A. Yes.

Q. Later, that action was rescinded, is that correct? A. No.

(Testimony of Morton W. Tompkins.)

Q. Well, what happened to that action?

A. The grievance committee rules were adopted at the March 27th meeting.

Q. Yes.

A. But amendments had been made at that meeting.

Q. Amendments were made at the March 27th meeting?

A. Amendments were made at the meeting, so we could not adopt them officially for at least one month. They also had to be approved by the state—well, not an action of the board of trustees, but they had to be approved through the legal counsel of the state association. In fact, all revisions of the local bylaws have to have approval of the state before they are official. [1698]

Q. I see.

A. So we had to submit that entire addition to the bylaws and there were some other additions also to the state for approval.

Q. And these——

A. After which time, then they could become part of our bylaws.

Q. I see. But they were not effective until they were approved by the state?

A. Until they were ruled on by the state.

Q. I see. Then on April the 22nd was the state grievance committee hearing, and did you attend that meeting, if you recall?

A. Yes.

Q. As a matter of fact, in that meeting you

(Testimony of Morton W. Tompkins.)

asked a good many questions, did you not, during the proceedings?

A. It depends on what you call a good many.

Q. Well, did you ask some questions?

A. I asked some, yes.

Q. Did you take an active part in the meeting, do you recall? A. In one of the meetings.

Q. What do you mean one of the meetings? Was there more than one meeting there?

A. Yes, the meeting was divided into two distinct parts. In the morning, the committee considered the complaint [1699] against the local society presented by Dr. Robinson regarding the authenticity, the legality, and so on, of the grievance committee.

Q. Yes.

A. And the afternoon session was devoted entirely to the complaint of Thomas R. Brooks versus Dr. Robinson, two separate meetings held on the same day.

Q. You were president of the local society at this time? A. I was president, yes.

Q. Which one of these meetings did you take an active part in? A. In the second.

Q. Was there a particular reason why you were active in the second and not in the first?

A. I was asked by the chairman of the state grievance committee who would present the case. Because I was president of the society, I assumed that duty.

Q. You mean in the afternoon session?

(Testimony of Morton W. Tompkins.)

A. Yes.

Q. And as a result, you then did present the case?

A. Yes, I proceeded for the calling of witnesses, and so on.

Q. Dr. Tompkins, had the local society taken a position with the state grievance committee as to whether the meeting in the morning should be held at all?

A. No, we hadn't taken any position if you wish to say had [1700] we protested it.

Q. Yes.

A. No, we wrote a letter of protest asking what the complaint was. We got the notice that the meeting was going to be held and that we would have the hearing of Dr. Robinson versus the local society and we had no idea exactly on what point or points. I think the correspondence here confirms that. We didn't realize any charges had been made or any complaints had been made, and we didn't even know the subject of it.

Q. Well, the position of the local society then was that actually this matter had never really been appealed, is that correct?

A. It wasn't a matter of appeal at all. As soon as we had evidence that a complaint had been made, we were perfectly co-operative about it.

Q. Oh, I see.

A. Which was our attitude, I think, all the way through.

(Testimony of Morton W. Tompkins.)

Q. But you hadn't appealed any matter concerning the grievance committee, as such?

A. No.

Q. To the state association? A. No.

Q. But you didn't object to its being considered by the state association? [1701] A. Not a bit.

Q. If it had been appealed? A. Correct.

Q. Did you know that it was Dr. Robinson's position at that time that he also had not appealed it? A. No.

Q. Did you know that at the time the meeting was held? A. No.

Q. Did you subsequently discover that?

A. I discovered that during the process of this procedure in this room.

Q. Then on May 22nd, '51, that was the expulsion meeting of the society, and, of course, you were there? A. Yes.

Q. Did you preside at that session?

A. I did.

Q. Now, around about that time also in May, there appears to have been a meeting of the trustees at the Marcus Whitman at which Dr. Pratt was commissioned to get in touch with Dr. Robinson's father. Did you attend such a meeting as that?

A. I don't recall of any such action as that.

Q. Do you remember any meeting of the trustees held around that date, around May the 22nd or a few days thereafter, at which the matter of Dr. Pratt getting in touch with [1702] Dr. Robinson's father was discussed? A. No.

(Testimony of Morton W. Tompkins.)

Q. Do you remember any meeting that was held unofficially at which that was a topic of conversation?

A. You will have to put a date or approximate date on that.

Q. Well, I don't know the approximate date, I was asking you if such a meeting had been held?

A. My first knowledge that Dr. Pratt had made a contact with any member of the Robinson family, and I did not know to which member, came to my knowledge after the first hearing of the Judicial Council in Los Angeles in December of 1951.

Q. Were you in attendance at the depositions which were taken in the state action, state court action, in '53? I believe your deposition was taken, and let me ask you, were you in attendance when Dr. Carlson's deposition was taken?

A. I don't know.

Q. Do you remember Dr. Carlson stating anything in that deposition relative to such a meeting being held?

A. No. I don't remember any such thing. I wouldn't say that it didn't happen, but I don't remember it.

Q. Well, would you say, Dr. Tompkins, that such a meeting was not held?

A. Well, I attended all of the meetings, almost without [1703] exception, during this entire period of two years. The only time the board of trustees delegated any right or authority to Dr. Pratt was to try to reason with Dr. Robinson personally in

(Testimony of Morton W. Tompkins.)

some way, and this occurred before the hearing of the Thomas R. Brooks case in November of 1950. That is the only time that the board of trustees authorized Dr. Pratt to do anything and I do recall that, but it was primarily in regard to his antagonism toward the grievance committee.

Q. Now, do you remember about the date when that occurred?

A. That would have been before November 21st, 1950, and I do recall that that particular thing came up at that time, but at no time other than that was Dr. Pratt ever given any authority by the board of trustees to do anything other than as a friend.

Q. Was Dr. Pratt in attendance at the meeting you have just mentioned?

A. I believe—not at the November 21st meeting, I don't believe.

Q. Yes, that is what I meant.

A. I don't think so. The record will show.

Q. Was some member of the trustees delegated then to confer with Dr. Pratt and ask him to do something?

A. If I recall correctly, it was a combined meeting. When I say combined meeting, the trustees of the bureau had a [1704] meeting and the board of trustees of the medical society had a meeting immediately following. The members of the bureau board, occasionally some of them stayed and listened in on our meeting. They were not unwelcome. They were not officially members. And I believe Dr. Pratt was present at a meeting under those circumstances.

(Testimony of Morton W. Tompkins.)

Q. Well, then, Dr. Pratt was present when he was delegated, is that correct? A. Yes.

Q. Now, there doesn't seem to be any entry in the minutes relative to that.

A. No, I think it was an unofficial action entirely. We were trying, trying desperately, to potentially cool off what was starting to get to be an extremely hot issue.

Q. What issue was that?

A. That was the grievance committee issue, Dr. Robinson's antagonism toward it.

Q. Well, now, on the unofficial part of it, who were the persons who participated in the unofficial discussion of that matter?

A. I wouldn't say for certain, but I believe it would include—Dr. Pratt may have been a member of the board of trustees, at that time, in 1950. Dr. Page would be there, Dr. Ralston. [1705]

Q. Dr. Yengling, possibly?

A. No. I believe Dr. Pratt was a member of the board of trustees in 1950. The record will show that.

Q. I believe that Dr. Pratt in his deposition mentions that Dr. Yengling spoke to him about that.

A. That is a possibility.

Q. You don't believe that he was at that meeting, though? A. I don't think so.

Q. Now, in that unofficial discussion, the purpose of it was to dissuade Dr. Robinson from pursuing the matter against the grievance committee, is that correct?

A. Not necessarily persuade him to stop the ac-

(Testimony of Morton W. Tompkins.)

tion, we had no particular desire on that, but to cool off the extremely violent remarks that he had started to make.

Q. Was specific reference made to the remarks he was making?

A. Well, this is at the time we were being deluged approximately once a week with a three to six or seven page letter, and I think all of those are in evidence.

Q. And you objected to the language in those letters? A. We objected to the letters.

Q. To the letters. Well, now, why did you object to the letters?

A. Primarily for what they said, the inferences they drew, and the false conclusions that they drew.

Q. Well, now, Dr. Tompkins, how many such letters did you [1706] get altogether of that?

A. I don't know.

Q. You mentioned two or three a week?

A. No, I said approximately one a week.

Q. Oh, I see.

A. I think we have in evidence here that there occurred at least three or four in the month of October and approximately two in the month of November and maybe one in December and another in January, and I think perhaps another one in February. I am not sure of the exact number.

Q. And the members of this unofficial group objected to that schedule of letters?

A. Well, it is—these letters, I think, as you have read them over, would bring out controversial points

(Testimony of Morton W. Tompkins.)

and we knew all those controversial points were going to be ammunition for further discussion in our subsequent medical meeting.

Q. Ammunition for whom?

A. For Dr. Robinson.

Q. Well, then, you objected to his phrasing those things in the letters for subsequent use at the meetings?

A. Let's put it this way, Mr. Sembower: Dr. Robinson would write a letter and he didn't wait until the next meeting to answer his own letter. He assumed what the arguments [1707] would be and then soon he came out with another letter where he was answering what he assumed the objections to his previous letter were, and if we still didn't have a meeting, then another letter would come along, and then we finally would have a meeting and we would have the compilation of all three. We were getting no work done at all in our society meetings and they had changed from an hour or an hour and a half to three and four hours.

Q. Because of the issues raised in these letters?

A. Primarily, but not the issues particularly, but the way in which they were presented and the falacious arguments that were being presented.

Q. Well, did you arrange for any member of the group to answer Dr. Robinson? A. No.

Q. Well, now, Dr. Balcom Moore wrote quite a detailed letter to Dr. Robinson, did he not?

A. That has been presented, yes.

Q. Was that an answer prepared by this group

(Testimony of Morton W. Tompkins.)

or after discussions in the group? A. No.

Q. That was just a letter of Dr. Balcom Moore's, entirely on his own, is that correct?

A. I think that Dr. Moore's letter was written—you can correct me on the date—subsequent to Dr. Robinson's [1708] resignation from the medical bureau, and he wrote as president of the bureau at that time. I believe Dr. Moore perhaps may have written another letter along about this time, and he did it entirely as an individual.

Q. Well, now, the letter of Dr. Robinson relative to his resignation from the bureau was dated, I believe, August the 16th. You received a copy of that letter?

A. I don't know. I was on vacation.

Q. Well, did the members of the society or this group that you referred to, did they resent that letter?

A. No. I don't think anybody resented it.

Q. Did you know that that letter had been shown to Dr. Pratt before it was sent out? A. No.

Q. Did he ever state at any of your meetings that he had said he thought it would be a good idea to send that out? A. No.

The Court: What letter is that, Mr. Sembower?

Mr. Sembower: That was the first letter, your Honor, the one where Dr. Robinson withdrew from the bureau.

The Court: That is Exhibit 8?

Mr. Kimball: August 11th, 1950. He didn't withdraw at that time.

(Testimony of Morton W. Tompkins.)

Mr. Sembower: That's right, he didn't resign.

The Court: That isn't the resignation [1709] letter?

Mr. Sembower: No, I'm sorry.

The Court: That is another "Dear Doctor" letter. Is that the first one?

Mr. Tuttle: Yes, the first one.

Mr. Kimball: That is correct.

The Court: The resignation letter, I think, is 8.

Mr. Kimball: August the 17th.

Q. (By Mr. Sembower): Well, now, to your knowledge, Dr. Tompkins, was Dr. Pratt's getting in touch with Dr. Robinson's father an adventure of his own, then?

A. I know nothing about that at all.

Q. You didn't participate in any discussions leading to that matter?

A. Not in the slightest.

Q. Dr. Tompkins, in a letter from Mr. Rosling to Dr. Cunniffe, Plaintiff's Exhibit 149, Mr. Rosling states that the state society never received notice that Dr. Robinson had been expelled.

Now, do you know of your own knowledge whether such notice was furnished to the state society or not? A. I don't know.

Q. Well, I have a copy of your letter, this is Plaintiff's Exhibit 115, from Morton W. Tompkins to K. L. Partlow, in which you state:

"Please be advised that the membership of [1710] the Walla Walla Valley Medical Society, at the regular meeting held Tuesday, May 22nd, 1951, took

(Testimony of Morton W. Tompkins.)

action in the matter of the complaint of Thomas R. Brooks vs. Miles H. Robinson, M.D. The membership found Dr. Robinson guilty on two counts, unprofessional conduct and revealing privileged information, and upon a vote of 26 to 4 expelled Dr. Robinson from membership. A complete copy of minutes of the meeting will be furnished to you within the next few days.”

The Court: Pardon me, what exhibit number is that?

Mr. Sembower: That is No. 115.

The Court: Thank you.

Q. (By Mr. Sembower): Did you send along within a few days the copy of the minutes of the meeting, if you recall?

A. Did I write that letter?

Q. I will show it to you. A. I recall now.

Q. And that would constitute notice, would it not, to the state association?

A. Yes. The minutes of that meeting, I don't believe, were sent for several weeks, but they were sent before the first of September.

Q. Now, in further connection with the state association, Dr. Tompkins, Mr. Fullerton testified yesterday in this [1711] action that he always acted under the authority of those who were officers of the association. Five days after the Brooks complaint was taken down in the extraordinary meeting of October 11, 1950, he wrote a letter to Ralph W. Neill, the executive secretary of the Washington State Medical Association. That is Plaintiff's Ex-

(Testimony of Morton W. Tompkins.)

hibit No. 23 and I will show you this letter and ask you if you have ever seen it before?

A. Yes. I have seen a copy of it.

Q. In what connection have you seen it?

A. In connection with the exhibits in this case.

Q. Well, now, in this letter he states:

“We have a situation within this society here that indicates it will be necessary to use the services of the state grievance committee. Will you, therefore, kindly advise the answers to the following questions * * *”

And he enumerates a series of five questions, and the reply came back a few days later keyed in with that same series of numbers.

Now, did you direct Mr. Fullerton to write this letter seeking information?

A. Not as an individual, I believe it came from the board of trustees, either that or from Dr. Page. I knew that it had been requested. [1712]

Q. You don't remember precisely whether it was the board of trustees or Dr. Page?

A. No, I don't.

Q. Did the other members of the board of trustees know that such a letter had gone forward, to your knowledge?

A. If it were an official action of the board of trustees, they would know. If it were a matter of Dr. Page's request, they might not know until after the answers came back, but they were acquainted with the fact that the information did come back to the board of trustees.

(Testimony of Morton W. Tompkins.)

Q. Dr. Tompkins, there was some testimony by Mr. Fullerton that he had not discussed the matter with Brooks as to whether Brooks intended to sue or not. Did you ask Mr. Fullerton at any time to talk to Tom Brooks and discuss with him the question whether Brooks planned to file suit against Robinson? A. Yes.

Q. On what occasion did you talk to him about that? A. It was after I became president.

Q. And when would that be, about?

A. 14th of December, 1950.

Q. All the way then that late? A. Yes.

Q. You don't remember talking to him at any time prior to that? [1713]

A. I had no authority to, except as a member of the board of trustees.

Q. Where did that discussion take place, if you recall?

A. It was after a meeting at St. Mary's Hospital, approximately 10 o'clock at night, and it was raining.

Q. Was anyone else present? A. No.

Q. Besides the two of you?

A. No, we were the last two to leave the meeting. I am not sure whether it was a medical society meeting or a bureau meeting. I am not sure whether it was in December of '50 or in January of '51.

Q. Well, what did you say to Mr. Fullerton and what did he say to you?

A. I don't know how the subject of the Brooks hearing had come up, unless it was just after the

(Testimony of Morton W. Tompkins.)

board of trustees had referred it to the state grievance committee and we may have had some information back from the state regarding it. He said, "I hope"—this is not exact quotation, but in substance—Mr. Fullerton stated, "I hope Mr. Brooks doesn't"—well, he intimated—"go off half-cocked and sue." And I said, "Would you please contact Mr. Brooks for me and tell him not to sue until we have had ample process or time to process this case?" He said, "I will." Approximately a [1714] month later, in passing, at another meeting or afterward, he says, "I got the word."

After the suit had been filed in Superior Court, Mr. Fullerton again came to me and said, "Is Mr. Brooks released from his promise?" And I said, "Yes."

Q. Then you did, to your knowledge, you had a definite commitment from Brooks as to whether he would sue or not? A. I understood that, yes.

Q. Now, I am concerned only about the time element because I had been under the impression that the conversation must have been much earlier.

A. It couldn't have, because I had to speak in that vein only as president of the society and I did not become president of the society until December 14th.

Q. In your deposition on page seven, the interrogation is concerning the joint meeting of the board of trustees and the grievance committee which was called by Dr. Page on October the 11th, 1950, and

(Testimony of Morton W. Tompkins.)

the interrogatories seem to relate entirely to that element. For instance:

“Q. Did you have any discussion with him aside from the informal meeting after that?”

“A. No.

“Q. Did you have any discussion with him at the meeting that would not be of record?”

“A. No. [1715]

“Q. Did you ever have a discussion with him concerning his attitude toward suing Dr. Robinson?”

“A. Not personally.

“Q. How do you mean, not personally? Did you have any sort of discussion with him? You say not with him, who did you have it with, then?”

“A. Mr. Fullerton.”

And there is no regular reference here, I think, to the matter that that discussion took place in December.

A. There is no reference that it took place at any particular time at all.

Q. Well, that may be true. Your definite recollection now is that it was not at the time of the October 11th meeting? A. Yes.

Q. Do you know of your own knowledge whether Dr. Page had any such conversations with Tom Brooks through Mr. Fullerton similar to yours?

A. I don't know.

Q. Did you know of your own knowledge at that time that Brooks intended to sue?

A. He had intimated that he might when he

(Testimony of Morton W. Tompkins.)

gave his original statement of complaint on October 11th.

Q. Do you know whether he had consulted counsel at that time? [1716]

A. I don't know, but I assume from at least the manner in which he spoke that he had not.

Q. Do you know of any cause of action that he possibly could have brought against Dr. Robinson?

Mr. Kimball: If the Court please, I think that is calling for a legal conclusion.

The Court: Yes, I will sustain the objection to that.

Q. (By Mr. Sembower): Now, Dr. Tompkins, with reference to the investigation of the so-called Brooks complaint, you testified that you attended that meeting. Did you know when you went to that meeting that Brooks' daughter had complained against Dr. Robinson about a bill of a dollar and a half?

A. I am not clear of what you mean or which meeting.

Q. I am referring to the meeting of October the 11th, the meeting at which doctors who were members of the board of trustees and the grievance committee convened.

A. Yes.

Q. At the call, I believe, of Dr. Page; was that not correct? A. Yes.

Q. For the consideration of Brooks' complaint, so-called, at which his statement was then taken down? A. And your question?

Q. And the question is, did you know at the

(Testimony of Morton W. Tompkins.)

time you went [1717] to the meeting that Brooks' daughter had filed a complaint against Dr. Robinson a short time previously objecting to a dollar and a half bill?

A. I cannot answer that just exactly the way you have stated it. When I went to the meeting, I knew nothing except I was being called to a special meeting.

Q. Who got in touch with you actually to attend the meeting?

A. I don't know, it was either Mr. Fullerton or Dr. Page. I believe it was Dr. Page.

Q. Was it a personal conversation, as you recall, with Dr. Page?

A. I question that I took the call personally. At that particular time, my office was rather crowded. I had three girls, and one girl tried to take all messages possible. I think I merely received the message to be in the medical service bureau's office at a specific time for an official meeting.

Q. Did you have any idea in advance what the meeting was going to consider? A. No.

Q. Had you had any conversation with Dr. Peter Brooks about the matter before you went to the meeting? A. No.

Q. Well, when you attended the meeting, will you describe to us approximately what took place there? [1718]

A. The doctors were arranged around the room——

Q. This was Dr. Ralston's office, was it?

(Testimony of Morton W. Tompkins.)

A. No, this was in the medical service bureau office.

Q. I see; and that was in the Drumheller Building?

A. The Drumheller Building. We were sitting on chairs and desks. Those present constituted the members of the grievance committee and the board of trustees, the executive secretary of the society, legal counsel, and a court reporter. There was a gentleman sitting over by the door or brought into the door by Mr. Fullerton and introduced as Mr. Tom Brooks. I can't recall whether Mr. Fullerton then carried on and said he had something to say or whether Dr. Page took over and said, "Mr. Brooks has a story he wishes to tell you."

Mr. Brooks sat down by one of the tables, the court reporter was opposite him, and we listened. At the end of his dissertation, the counsel asked two or three questions to clarify his identity or some such thing as that, and that was all. The meeting adjourned.

Q. Had any such meeting as this kind in your experience been held by the members of the society?

A. No.

Q. Was any explanation given by Dr. Page as to why this extraordinary meeting was being held?

A. At that time? [1719]

Q. Yes?

A. To my memory, and I think that it will probably show in the transcript, "A complaint has been made of a sufficiently serious nature to warrant your hearing it in person."

(Testimony of Morton W. Tompkins.)

Now, I am not sure of the exact words but I am sure the content of that type of thing shows in the first part of the Brooks complaint. That is the only statement that was made, no explanation.

Q. Who made that statement, if you recall?

A. I believe Dr. Page, but I would not say for certain.

Q. Well, you did at this time have a grievance committee, did you not? A. Yes.

Q. Did you know of its existence? A. Yes.

Q. Did you know who the members of it were?

A. I am not sure. I think the members of the grievance committee came out before the society membership on September 26th.

Q. And that, you would say, is the first knowledge that you had of the membership of the grievance committee, September 26th? A. Yes.

The Court: Of 1950, did you say? [1720]

A. 1950.

Q. (By Mr. Sembower): And prior to that, did you know how the grievance committee was constituted? A. No.

Q. Did you participate in any of the discussions at the time of the creation of this committee, whether it should be secret or not? A. No.

Q. Well, did anyone at this meeting make the suggestion that this was a matter which should be considered by the grievance committee, as such?

A. The local grievance committee?

Q. Yes. A. No.

Q. Did anyone voice the feeling that it was a strange thing for the trustees and the grievance

(Testimony of Morton W. Tompkins.)

committee members to come together here and hear this particular complaint? A. I don't recall.

Q. Did you gather from the expressions made at that meeting that this was the manner in which you were going to handle all grievances that came in?

A. No, my impression subsequently—of course, prior to the meeting I had no impressions—my impression subsequently, and I think it became obvious as the meeting [1721] progressed, that the reason the grievance committee and the board of trustees was there was to determine into which category the complaint might fall, whether the complaint was of such a nature that it would be in the jurisdiction of the grievance committee, so-called, minor complaint, or if it involved ethics, then it would be in the jurisdiction of the board of trustees, and I believe that the reason for the joint meeting was we knew nothing about the complaint. I cannot say for sure as to what Dr. Page's reason was, but that is the type of reasoning that I have applied to the membership as I saw them.

Q. And this is the rationale you placed on it later on as you looked back on it? A. Yes.

The Court: Time for recess, court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Tompkins, at the meeting of October the 11th, at which Mr. Brooks was present, did you at that time doubt that Dr.

(Testimony of Morton W. Tompkins.)

Robinson's diagnosis of the disease in the Brooks family was accurate?

A. Didn't even think about it.

Q. Didn't form any opinion concerning that at all? A. No, not a bit. [1722]

Q. Did you later on discover or learn that those diagnoses were corroborated by Dr. Peter Brooks?

A. I believe they were only partially corroborated.

Q. Well, we will have to let the testimony speak for that. But it was your impression, then it was your information later, they were only partially corroborated, is that correct? A. Yes.

Q. You could be in error on that?

A. It is possible.

Q. Did you know at the time of that meeting that Tom Brooks had refused to do anything about the condition that had been discovered, that is, his disease that had been discovered? A. No.

Q. Did you know at that time that Mr. Edwards, who was Brooks' son-in-law, had not been told that his father-in-law had this disease, that is, by the name of the disease? Did you know that?

A. Would you repeat the question, please?

Q. Did you know at the time of the hearing that Mr. Edwards, Brooks' son-in-law, had not been in fact informed that his father-in-law had syphilis?

A. I don't know.

Q. Now, if you had known those various things—we will [1723] assume their truth were established—would that have changed your attitude at

(Testimony of Morton W. Tompkins.)

that meeting concerning the Brooks complaint?

A. I don't believe I had an attitude at that meeting.

Q. Well, what action did the meeting take?

A. None.

Q. Now, explain that.

A. Just that, they took no action at all.

The Court: You are speaking now of the October 11th meeting?

Mr. Sembower: Yes, October 11th meeting.

The Court: At which Mr. Brooks' complaint was heard and taken down by a reporter?

Mr. Sembower: Yes.

The Court: All right.

Q. (By Mr. Sembower): Dr. Tompkins, to refresh your recollection, I have a transcript here of the hearing which was held before the grievance committee of the Washington State Medical Association, in which the chairman said to Dr. Tompkins: "Did you investigate the tests of both?" And did you not on that occasion state: "I have the statement of Dr. Brooks both were positive"? A. Yes.

Q. Well, what was the product of the meeting at which Brooks attended? [1724]

A. Which meeting?

Q. On October 11th?

A. What do you mean?

Q. Well, when you went away from there, what was to happen next?

A. We were to wait for the transcript.

Q. Well, now, were you completely tentative about it at this time or—— A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And now, I have here, Dr. Tompkins, Plaintiff's Exhibit 37, which is a photostatic copy of a letter from Dr. Miles H. Robinson to the board of trustees of the Walla Walla Valley Medical Society, dated November 7th, in which he states:

“According to the procedure established by the constitution and bylaws of our society, I submit to you herewith my formal complaint against the unknown members of our secret grievance committee and C. E. Fullerton, responsible for the injurious letter which Fullerton sent to the father, Noel Edwards, of my patient, Noeline Edwards, on September 30, 1950.”

I ask you if you remember receiving a copy of that letter? A. Yes. [1725]

Q. Is that one of the letters to which you were referring a little while ago that Dr. Robinson sent out periodically?

A. No, this was a specific letter, different subject. Same subject, but this was his specific complaint against the grievance committee.

Q. I see. I ask you if you recall when you received that letter? The date on it is November the 7th.

A. To my memory, it was received in the morning mail on the 11th of November.

Q. Why do you remember that so precisely?

A. Mr. Fullerton and I were going over the various material at one time and we had the time of receipt of the various documents stamped on the document. I recall the time stamped on Miss Curts'

(Testimony of Morton W. Tompkins.)

copy of Mr. Brooks' complaint was stamped at 9 a.m. and the letter from Dr. Robinson was stamped 10 or 10:30 a.m.

Q. Well, now, what was the date on that manuscript of Miss Curts' and the time?

A. I believe it was either November 9th or 11th. I am not sure.

Q. Was it a complete transcript of the hearing?

A. It was a transcript—

Q. I mean, of the statement, so-called?

A. Of the statement made October 11th. [1726]

Q. Was that an original? A. Yes.

Q. That you saw there? A. Yes.

Q. Where did you see that?

A. I believe it was the material presented before the board of trustees at one of our meetings.

Q. I mean, where did you see the date stamp and time stamp on it?

A. On the copies that were supplied to the board of trustees at the time we had a meeting to act on it.

Q. Well, I don't see quite the connection of how you compare that with the date that you noticed on this. Your recollection is this was the 11th. Were you and Mr. Fullerton together when you observed these date stamps, if you recall?

A. Well, the entire board of trustees was present.

Q. At what meeting was that, if you recall?

A. It would be the meeting of the board of trustees where we received the complaint from Thomas R. Brooks, at which time we set up the time of the

(Testimony of Morton W. Tompkins.)

hearing which was to be held on November 21st. The minutes would show the exact date.

Q. Well, now, I have before me the minutes of a special meeting of the board of trustees and that is November the [1727] 9th.

A. Then, it would be on November 9th that these were received.

Q. Well, then, your recollection was faulty concerning the date of the receipt of this letter, is that correct?

A. My recollection was not definite on the 9th or the 11th. I knew it was one of the two days, but I wasn't sure. With your reminder, it was the 9th, because it occurred on the same day.

Q. And you had at that time also this transcript of Miss Curts'? A. Yes.

Q. Had it been signed by Brooks at that time?

A. Yes.

Q. And it bore the date stamp and time stamp on it? A. Yes.

Q. We have that as an exhibit, we might look at it.

While we are looking for that, the time that you remarked the fact that these were date-stamped the same date, were you then at the meeting that was held at that time?

A. Would you restate that, please?

Q. You recall seeing these two things together date-stamped the same time, is that right?

A. Yes. [1728]

Q. Then was that at the place of the meeting?

A. Yes.

Q. That was held in the evening, it seems to have

(Testimony of Morton W. Tompkins.)

and Mr. Fullerton had brought these over from his office, had he? A. Yes.

Q. I wanted to ask you about that meeting of November the 9th. Do you remember anything special about that meeting other than just the order of business, being this complaint?

A. I think the minutes will show what occurred.

Q. Well, the minutes are quite brief. What I am particularly interested in are the persons who attended. Do you remember anything unusual about that?

A. If I recall testimony that has taken place here——

Q. Well, I really don't want to ask your recollection of the testimony here; I would like to have your independent recollection, if you can?

A. I don't know.

Q. Well, I will show you the minutes, which show that the members of the trustees present were four, Page, Tompkins, Keyes and Ralston. The others present were Lyman, Stevens, Kimball and Fullerton.

Mr. Rosling: And Johannesson.

Mr. Sembower: And Johannesson. [1729]

Q. Now, I would like to ask you why you recall the nonmembers of the trustees were present?

A. Anyone was welcome to our board of trustees meetings. Why they were, I do not know.

Q. Is there anything significant to the fact that Lyman and Stevens were on the grievance committee? A. I don't know.

(Testimony of Morton W. Tompkins.)

The Court: What meeting is this we are discussing now?

Mr. Sembower: This is the meeting of the board of trustees held on the night of November the 9th, 1950, at 9:15 p.m.

Mr. McNichols: Special meeting.

Mr. Sembower: Special meeting, yes.

Q. Well, do you think, Dr. Tompkins, that perhaps Doctors Stevens and Lyman and Johannesson and Judd Kimball just dropped by?

A. It is very possible that Dr. Johannesson, Dr. Stevens and Dr. Lyman may have been talking there and the meeting was called to order and they sat down. I don't know.

Q. I have here now, Dr. Tompkins, the Brooks statement, which is our Plaintiff's Exhibit 18, and ask you if you have seen that before? You will notice, if you will leaf it over, it bears the signature of Mr. Brooks. [1730]

Mr. Kimball: Are you speaking of that copy, counsel?

Mr. Sembower: Well, I am asking if he has seen this copy. I will ask him if he has seen another one.

A. Well, I don't know whether I have seen this copy or not. I have seen a copy which is purported to be the same.

Q. Now, you mentioned that there was a date stamp on it. Do you perceive any date stamp on that? A. Not on this copy.

Q. Do you feel this is a different copy from the

(Testimony of Morton W. Tompkins.)

one you saw? A. Yes, it was.

Q. What became of the one that you saw, if you know?
A. I have no idea.

Q. Was there more than one copy?

A. Yes.

Q. And did they all bear the signature of Brooks?
A. I don't know.

Q. Now, was the time of this meeting conditioned at all by when the manuscript, when the transcript, would be available?
A. Yes.

Q. How do you mean?

A. Until the transcript was available, we did nothing. As soon as it became available, we had a meeting.

Q. Did Mr. Fullerton make any explanation about the [1731] transcript, any delays about it, or anything of that kind?

A. I don't know whether it was Mr. Fullerton or not.

Q. Well, did somebody?
A. Yes.

Q. Who did? If you don't recall, what was said, however?

A. The transcript was unduly delayed so far as we were concerned because Miss Curts was involved in a court session and did not have time to transcribe this.

Q. And was any explanation made about her staying up until 5 o'clock in the morning to make the transcript that morning?

A. No, I have never heard that before.

(Testimony of Morton W. Tompkins.)

Q. Any other explanation about any circumstances about it at all? A. No. [1732]

* * *

Q. Now, Dr. Tompkins, you mentioned that when you went to the meeting, Mr. Fullerton had in his possession the date-stamped copy of this letter to the board of trustees of Dr. Robinson's, which is Plaintiff's Exhibit 37, the one we mentioned a moment ago? A. Yes.

Q. And you said constituted a complaint?

A. Yes. [1733]

Q. Now, there must have been discussion of this letter, was there not? A. Yes.

Q. What was that discussion?

A. I don't recall specifically, but we discussed it and sort of put up our hands and said, "What can we do about it?"

Q. Well, what did you mean by, "What can we do about it?"

A. We felt at the time of the first discussion that there was little or no merit to the problem.

Q. And you felt there was no merit to this?

A. Correct.

Q. Was there an expression at that meeting that there was no merit? A. Not official.

Q. An unofficial expression?

A. I said not official.

Q. There was, then, an unofficial expression?

A. Yes.

Q. Well, now, who participated in that unof-

(Testimony of Morton W. Tompkins.)

ficial expression? A. The board of trustees.

Q. Well, did you take some actions officially and some unofficially?

A. When you say an unofficial expression of opinion, in the matter of discussion we may talk something over and not [1734] come to a specific conclusion, not sufficient to take a specific action and report it in the minutes.

Q. How long did this meeting last, Dr. Tompkins, if you recall? A. I have no idea.

Q. Isn't it a fact that that meeting lasted about fifteen minutes? A. I question that.

Q. It was held after the regular meeting, wasn't it? A. Yes.

Q. And then after the members of the trustees had met, they then dispersed, is that correct, or did they stay around and talk a little while?

A. I don't know.

Q. You don't remember at what part of the meeting this unofficial discussion took place?

A. It was during the consideration of the complaint.

Q. Well, now, you testified a little while ago that there was considerable irritation about the letters that had been written by Dr. Robinson from time to time. Was there not in fact irritation evinced at this meeting over this letter here? A. No.

Q. They thought this was perfectly all right?

A. It was within his rights. [1735]

Q. And then after you considered the letter, then

(Testimony of Morton W. Tompkins.)

did you pass on to the matter of calling this meeting to set the Brooks complaint for hearing?

A. I am not sure which action took place first.

Q. You said that anyone could have attended that meeting. Could Dr. Robinson have attended the meeting?

A. If he had walked in, he could have.

Q. Had anyone, to your knowledge, made an attempt to talk to Dr. Robinson about the matter which had been discussed originally in the meeting on October the 11th? A. I don't think so.

Q. Was any comment made at the meeting, officially or unofficially, about that?

A. Which meeting?

Q. The meeting that you are now attending on the 9th.

A. Would you state that again, I don't quite get your meaning.

Q. Well, was there any comment made at that meeting about whether anyone had talked to Dr. Robinson or there had been any friendly discussions or anything of that kind apprising him of the Brooks complaint which had been filed, first discussed on the 11th? A. I don't think so.

Q. When did you first see Tom Brooks, Dr. Tompkins?

A. At the meeting of October the 11th. [1736]

Q. Had you ever seen him before?

A. Not to my knowledge.

Q. Did you learn at that meeting that he was an investigator for an insurance company?

(Testimony of Morton W. Tompkins.)

A. I learned that only today.

Q. Is there a possibility that he might have talked to you earlier than that date about an insurance case in connection with an investigation?

A. I don't know.

Q. There is a possibility?

A. I don't know.

Q. Had you ever seen Mr. Brooks around town?

A. If I did, I didn't know who he was.

Q. Do you belong to the Chamber of Commerce?

A. Yes.

Q. Had you seen him at any of the meetings of the Chamber of Commerce?

A. I have been in one Chamber of Commerce meeting since I joined approximately ten or twelve years ago.

Q. I was going to ask you next if you belonged to the Episcopal Church? A. No.

Q. What about the Masonic Lodge 13, do you by any chance belong to that?

A. Yes, I do. [1737]

Q. Had you seen him at any of those meetings?

A. I believe I saw him at the one meeting of the Blue Lodge that I attended approximately two years ago, but again I am a very poor meeting attendee at the present time.

Q. Dr. Tompkins, at this time how well did you know Dr. Robinson?

A. Only very casually.

Q. Had you been associated with him at all in connection with the practice of medicine? Your

(Testimony of Morton W. Tompkins.)

practice and his? A. One on occasion only.

Q. Was that a major matter or a minor matter?

A. It was a telephone conversation entirely.

Q. Had you had any social contacts with him that you recall? A. Not to my memory.

Q. Had you been in his home or had he been in your home? A. No.

Q. Had you gotten to know Dr. Robinson in connection with society and bureau activity?

A. After September 26th, 1950, yes.

Q. That was in connection with this matter?

A. Yes.

Q. But not prior to that? A. No.

Q. You received a copy of his letter of August 11th, 1950, [1738] which purported to be a rather lengthy, carefully drawn, carefully written, thoughtful criticism of the bureau, did you not?

A. I assume I did.

Q. Did you read it? A. No.

Q. What did you do with it?

A. I was on a vacation, I probably filed it in the wastebasket when I got home.

Q. Never read it at all?

A. Don't recall ever having seen that letter.

Q. Did you hear from anyone else that he had sent out such a letter around about this time? I assume you have heard a lot about it since.

A. I think that is the only time that I have heard about it, is since.

Q. I assume you didn't see Dr. Balcom Moore's answer to this letter, then? A. No.

(Testimony of Morton W. Tompkins.)

Q. What other bases, if any, of knowledge concerning Dr. Robinson prior to this date of October 11th did you have?

A. Would you state that again?

Q. What other bases of knowledge, what other knowledge did you have concerning Dr. Robinson, if any, prior to this date of October 11th, other than the things we have just [1739] covered?

A. I am not sure exactly what you mean.

Q. Well, I just wondered if you knew him by reputation?

A. You mean professionally, socially?

Q. Yes, professionally and socially and any other way?

A. I had heard that he maintained a rather extensive laboratory. I had heard that one of the major portions of his mode of treatment was diet. I had heard, I think, at this time, although I am not sure about this point, that he had been ill. And that is just about all.

Q. Had you heard anything about what the nature of his illness was?

A. Only in that he had a nervous breakdown.

Q. You had heard that?

A. I am not sure whether it was at this time or shortly thereafter. I couldn't put a specific time on that particular statement because that came to my knowledge at approximately this area.

Q. Do you remember where you heard that?

A. No, I don't.

Q. Just rumor, so to speak?

(Testimony of Morton W. Tompkins.)

A. Rumor in this respect, stated to me by a doctor.

Q. Well, now, do you remember who the doctor was? A. No, I don't.

Q. But you do remember it was a doctor? [1740]

A. Yes.

Q. You don't, however, remember exactly where you heard it? A. No, I don't know.

Q. Did he tell you any details about this purported nervous breakdown?

A. No. No, it was—to the limit of my memory on that particular point, there was a very casual remark that was made. I think it came after September 26th. Prior to September 26th, I don't know.

Q. Could it have been at one of these trustees' meetings, so-called? A. I doubt it.

Q. Well, now, as to the grievance committee of the local society, Dr. Tompkins, its rules and regulations were not approved until May the 22nd, 1951, were they? A. Right.

Q. Prior to that time, it was just getting along as best it could without rules and regulations?

A. I believe it would be better to say they were not getting along, period.

Q. I think you testified a little while ago that these rules were finally approved. Were they approved by the society at the March meeting? Was that March 29th?

Mr. McNichols: 27th.

Mr. Sembower: 27th meeting? [1741]

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And then they were sent on to the state and approved there and came back? A. Yes.

Q. This was 1951?

A. Yes. Wait a minute—yes, '51.

Q. Does the grievance committee exist today, Dr. Tompkins? A. Yes.

Q. Have they heard any cases recently?

A. I don't know.

Q. I think you testified in your deposition last fall, you stated: "I know that they did hear a case last year." A. You said recently.

Q. Does that refresh your recollection?

A. Would you specify "recently"?

Q. Yes—

The Court: He is asking you to specify what you mean by recently.

Mr. Sembower: Yes, I'm sorry. I thought recently might be within the last year.

A. I heard that they had a hearing on a complaint which subsequently came to suit during the year 1955.

Q. Is it any longer a secret committee?

A. No.

Q. Now, that approval of the rules and regulations of the [1742] grievance committee on May 22nd, 1951, was at the very same meeting, was it not, that Dr. Robinson was expelled?

A. Yes.

Q. You were president at that time?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Who, by the way, set up the agenda for that meeting? A. I did.

Q. In the minutes, Dr. Tompkins, it occupies more than twenty pages, I believe, the minutes for that meeting alone? A. Yes.

Q. And it seems to have been the longest meeting on record of the society, is that correct, to your knowledge?

A. I believe there were other meetings which may have let out later, but I believe that it was a result of a double meeting of the bureau and the society.

Q. The meeting started, I believe, for the bureau around about 6:30, is that correct?

A. I believe usually at 7 or 7:30.

Q. What time did Dr. Robinson's matter come on, if you recall? A. Perhaps 9 o'clock.

Q. And how long did it last, about?

A. From two to two and a half hours. [1743]

Q. Was there any special reason why this was such a full agenda on this meeting this night?

A. Part of it was the fact that the grievance committee reports had come back from the state committee on two matters; part of it was due to the fact that the state had submitted the approval of the rather extensive rules and regulations for the grievance committee and other changes in the by-laws. Both of those required more than the normal amount of time, and the Robinson matter and Brooks versus Robinson matter itself required considerable time.

(Testimony of Morton W. Tompkins.)

Q. Did someone arrange for the attendance there of Mr. Edwards and Mr. Brooks at that hearing?

A. Mr. Edwards.

Q. No one arranged for Mr. Brooks to attend?

A. No.

Q. You were here this morning and heard Mr. Brooks' testimony, did you not? A. Yes.

Q. Did that refresh your recollection that he was not sent for? A. Yes.

Q. Is it possible that you otherwise would have been under the impression that he had been sent for, along with Mr. Edwards? [1744]

A. No, I don't think so.

Q. Did you notify Dr. Robinson that he might present witnesses and testimony at this meeting?

A. Not specifically.

Q. Was it your plan to present Mr. Edwards as a witness at this meeting?

A. Only if the society wanted that evidence.

Q. And the society decided not to hear that evidence, is that correct?

A. We decided to hear it.

Q. And Mr. Edwards did testify then?

A. Yes.

Q. But Mr. Brooks did not? A. Correct.

Q. Did you see Mr. Brooks there?

A. No.

Q. At any time, Dr. Tompkins, was it necessary to amend the constitution and bylaws of the local society to provide for a grievance committee?

(Testimony of Morton W. Tompkins.)

A. And for inclusion of specific rules and regulations.

Q. Well, then was the amendment undertaken?

A. Finally we got it adopted May 22nd, 1951.

Q. Well, was that an amendment to the constitution and bylaws, that action?

A. It was an inclusion in the bylaws. [1745]

Q. Was the constitution ever amended?

A. No.

Q. Did you consider it necessary to amend the constitution in this connection? A. No.

Q. In your deposition, I believe that you state there that the local rules of the grievance committee were milder than the state rules. Do you remember making any statement of that kind?

A. Not specifically.

Q. Well—

A. I believe it referred perhaps to the rules that were presented by the grievance committee which we amended.

Q. I see. Well, what was that comparison that you made along that line?

A. The original rules and regulations for the grievance committee set up rather stringent powers and procedures and there were many members of the society who thought they were too stringent, so much so that an attempt was made to modify them at the December 14th meeting, 1950, but it was impossible to do so. So finally the suggestion was made that every member was to be circularized and send in his own suggestions and corrections. Then those

(Testimony of Morton W. Tompkins.)

were compiled, modified, and re-presented at the March 27 meeting. There were many attempts to set up a set of [1746] rules and regulations for the grievance committee. I believe Dr. Stevens had a very simple set of rules and regulations tentatively working before Dr. Robinson presented his complaint and that exploded the whole thing.

Q. Just one or two more questions with reference to that March 27th meeting before we leave it. I found in your deposition, Dr. Tompkins, that you had stated that the meeting was held on March 27th and you stated:

“We could have continued with the others technically, but we declared them null and void. We called a meeting by telephone and the girls called the meeting and Dr. Robinson was not notified of that meeting, and because of that one point, we revised and re-revised them. We did not have a grievance committee functioning at that time.”

Do you recall making that statement?

A. Yes.

Q. Then, in fact, you did have to pass upon these new rules and regulations on another occasion before they went to the state committee, is that not correct?

A. No, we had to pass on them at any time, but they could go to the state committee in the meantime.

Q. Oh, I see, you forwarded the draft to the state [1747] committee then? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And then presented them for approval at a later time.

You also stated in your deposition—well, you stated at the state grievance committee hearing, the transcript there of the hearing of the meeting of April 22nd, page 13, you said:

“We junked everything we had,”
referring to the rules,

“and made a complete new set and referred them back for suggestions and corrections that anyone might make. They came in and were again revised. They were presented to the society and adopted, presented to you gentlemen, and re-presented to the society. We were leaning over backwards because of the rules and regulations we had before.”

Do you recall making that statement?

A. Yes.

Q. Now, to what did you refer when you said, “We were leaning over backwards because of the rules and regulations we had before”?

A. The rules and regulations that Dr. Stevens had suggested had not been officially adopted, and then a group was presented and I don't know whether they were officially [1748] adopted at any time or not. But there were many objections to them by the members.

Q. By members other than Dr. Robinson?

A. Yes.

Q. And that was evinced at the meeting on November the 20th, perhaps? A. Yes.

Q. Where the society was only 15 to 14 in favor

(Testimony of Morton W. Tompkins.)

of the grievance committee? A. That's right.

Q. In your deposition, the question was:

“Q. In setting up your grievance committee, did you attempt to conform to the requirements and suggestions of the state association and the AMA?”

And you stated:

“They didn't have any yet.”

Do you recall that testimony? A. Yes.

Q. Do you recall when the state did supply rules and regulations that were afterward a guide?

A. Approximately two months after we had approval of our local rules and regulations from the state.

Q. And do you remember anything about the AMA providing any rules as a guidepost? [1749]

A. I don't know if they ever have or not. I can't say.

Q. And then you said, in the same deposition the question was asked:

“Q. During the interim, the grievance committee pretty well acted on their own, is that right?”

And you answered:

“A. Well, they just stopped acting. I think they settled two or three cases. When Dr. Robinson's case came up, their action stopped. There were no actions after that.”

Do you recall that? A. Yes.

Q. Now, is it a fact, Dr. Tompkins, that Dr. Robinson's activities, whatever they were, actually stopped the clock so far as the grievance committee was concerned? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Well, in what manner did he stop the functioning of the grievance committee?

A. I don't know whether the grievance committee was afraid to act or not or whether they didn't have any cases to come up, but they wrote a letter trying to settle a complaint, which they considered minor, the rest of us considered minor, and Dr. Robinson made a tremendous issue of that point, tried to destroy the whole idea of [1750] a grievance committee, maintained that they had no right to even ask him about his patients. That created some rather marked controversial subjects.

Q. Well, now, is that your construction of the position Dr. Robinson was taking, that he opposed the idea of a grievance committee that would look into any of the activities of the doctors?

A. No, Dr. Robinson has so stated.

Q. That is, of course, your assumption, isn't it? You are just very certain he stated that?

A. Dr. Robinson has made the statement at the meeting of November 26th, 1950: "This grievance committee has no right in any way to come between me and my patient," and those are practically verbatim words:

Q. Well, now, at what meeting was that statement made? A. September 26, 1950.

Q. And that meeting had occurred just a few days before this November 9th meeting? That was a special meeting of the trustees, is that correct?

A. Approximately six weeks before.

Q. Not six weeks?

(Testimony of Morton W. Tompkins.)

A. September 26th to November 9th.

Q. Well, that was also just about four days before the letter was sent out to the Edwards, was it not, telling them not to pay the bill? [1751]

A. Yes.

Q. Isn't it a fact, Dr. Tompkins, that Dr. Robinson was not challenging the grievance committee as a function to do anything, but that he was insisting upon its being constituted according to the constitution and set of rules and regulations?

A. No.

Q. You had the impression that was not his contention at all? A. At that time, it was not.

Q. And wasn't it also that he was contending that it shouldn't be a secret committee?

A. Yes.

Q. That was a matter that was raised?

A. Yes.

Q. And it was a fact at this time that the committee had no rules and regulations to guide it, is that not correct?

A. I won't say they had no rules and regulations.

Q. Where were those rules and regulations?

A. I don't know.

Q. Did you ever see them? A. No.

Q. Did you ever discuss the functioning of the grievance committee with Dr. Stevens? [1752]

A. I don't know, I assume yes.

Q. Would it have made a difference in your attitude toward Dr. Robinson's complaint about this

(Testimony of Morton W. Tompkins.)

committee if you had known that the first Dr. Robinson knew of the existence of the committee was Stevens' addressing him on the street?

A. Dr. Robinson told us that.

Q. And that didn't change your attitude?

A. No.

Q. Or, as a matter of fact, Dr. Tompkins, the committee had really never had a meeting, had it, up to this time?

A. At that time, I did not know it.

Q. You did not know that at that time?

A. No.

Q. Might that have had an effect upon your attitude toward this matter?

A. Toward which matter?

Q. I mean toward the complaints being raised by Dr. Robinson about the functioning of the grievance committee?

A. It did influence me at the time we considered his complaints before the board of trustees.

Q. How do you mean it influenced you?

A. I considered that very definitely.

Q. And then disregarded it, is that correct?

A. Yes.

Q. Now, Dr. Tompkins, with reference to the motion, to the application, or whatever it was, for a rehearing of the Robinson appeal in Los Angeles—perhaps I had better take it up in order and ask you about the Los Angeles hearing at which Dr. Robinson's appeal to the Judicial Council was considered. Did you attend that meeting?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. I believe the date was December 2nd, was it not? A. Yes.

Q. Do you recall who was present there?

A. Dr. Robinson, Dr. Cunniffe, Dr. Benson, Dr. Page, myself, I think Ross Wright, and the rest I do not know.

Q. I believe that after the meeting was over that one of the major bases for your suggestion that a rehearing be held by the AMA was that you stated you had a very short notice of its being held, is that correct? A. Correct.

Q. Do you know that Dr. Robinson's appeal to the Judicial Council went in, I believe, on June the 9th prior to that?

A. I have learned that only since this proceeding started.

Q. Had no information reached the society at all from the AMA headquarters concerning the pendency of this appeal? [1754] A. None.

Q. To your knowledge, had any information reached the state society?

A. To my knowledge, no.

Q. If the state society had received such information, do you feel sure that it would have reached you?

Mr. Kimball: How would the witness possibly know that?

Mr. Sembower: Well, he may know.

The Court: I don't know, I think I will sustain the objection to that.

Mr. Sembower: All right.

(Testimony of Morton W. Tompkins.)

Q. Well, now, Dr. Tompkins, at the hearing in Los Angeles, was any objection made by you or your associates from Walla Walla and Washington State Medical Association, any objection made on the basis of notice? A. The basis of what?

Q. On the basis of the length of notice?

A. I don't know if you would call it a specific objection or not. We prefaced our remarks by saying—I did—saying that I had heard of this appeal for the first time on the previous Wednesday night. This was Sunday morning. I had had no opportunity whatever to even examine the material until 11:30 the preceding night. "So that we do not know what your procedures are nor [1755] what materials you will want. If you will bear with us, we will try to supply them to you."

Now, that was the opening statement made by the representatives of the local society.

Q. And then you did go ahead and participate in the proceedings? A. Such as it was.

Q. And you presented argument on behalf of the finding which had been made here by the Walla Walla society, did you not? A. We tried.

Q. Well, now, that hearing in Los Angeles was directed toward hearing the facts and the so-called law and procedure, or both?

A. Supposedly just procedure.

Q. So you didn't have to present any witnesses?

A. No.

Q. And then did you present the argument on the procedure? A. We tried to.

(Testimony of Morton W. Tompkins.)

Q. And you didn't in any sense withdraw from the proceeding, is that correct? A. No.

Q. You say you tried to present it. You were familiar, thoroughly familiar, with the steps that had been taken, were you not? [1756]

A. Yes.

Q. And you had an opportunity, did you, before the council to outline those steps? A. No.

Q. What opportunity did you lack?

A. The chairman of the Judicial Council, as soon as grievance committee was mentioned, pursued the idea that the expulsion had come as the result of action of the grievance committee, and at no time were we allowed or permitted to present evidence that the grievance committee action on the Edwards case and the action on the Brooks case which led to expulsion were completely two separate and distinct operations so far as the local society was concerned.

Q. Well, now, you say evidence, you really mean argument, I assume? A. Pardon?

Q. I say you used the word "evidence"; I assume that you mean argument? A. Yes.

Q. Because they were not taking testimony, were they? A. Evidence of procedure.

Q. Well, we won't labor that. But you made no objection at the end of the proceeding, did you?

A. We made objections all the time until they shouted us [1757] down.

Q. Shouted you down?

(Testimony of Morton W. Tompkins.)

A. Certainly. Dr. Robinson was ready to crawl across the table at me, he got so angry.

Q. Well, the proceeding was under—

A. Was chaos.

Q. Was a record kept of this proceeding?

A. No.

Q. Did you ask that a record be kept?

A. No.

Q. Well, then, what did you do after the proceeding was over? A. Came home.

Q. And what did you do after that?

A. Waited.

Q. And what was the next thing that happened?

A. We got a telegram approximately February 1st.

Q. And how did you regard that telegram, Dr. Tompkins? A. We were bewildered.

Q. Well, now, the statement in the telegram is perfectly clear, is it not? A. No.

Q. Did you question the authenticity of this telegram? A. No.

Q. I have here, Dr. Tompkins, Plaintiff's Exhibit 157 and [1758] this happens to be the copy addressed to Dr. Miles H. Robinson. I will ask you if you received one like it. It states:

“The appeal to the Judicial Council of the American Medical Association of Dr. Miles H. Robinson, Walla Walla, Washington, from the decision of the Washington State Medical Association by which Dr. Robinson was expelled from membership in the Washington State Medical Association and the

(Testimony of Morton W. Tompkins.)

Walla Walla County Medical Society is sustained by the Judicial Council and the decisions of the constituent and component societies in this matter are reversed.

“EDWARD R. CUNNIFFE,
M.D.

“Chairman, Judicial Council,
American Medical Assn.”

And it comes from Chicago. I ask you, did you receive a copy, a similar telegram?

A. Did I personally?

Q. Well, did the society? A. Yes.

Q. Or any of its duly constituted officers?

A. Yes.

Q. All right, and what did you do with the telegram then? A. We talked about it. [1759]

Q. Who talked about it?

A. The board of trustees.

Q. And where did they talk about it and when, approximately?

A. Perhaps from the day they got it until the end of March.

Q. Well, did you have a meeting? A. Yes.

Q. Well, now, was that an unofficial meeting or an official meeting?

A. It was an official meeting.

Q. And what was the decision reached by the trustees?

A. It was tabled until we received further information from the Judicial Council.

(Testimony of Morton W. Tompkins.)

Q. Did you have any reason to expect that you would receive further information from the Judicial Council?

A. We assumed from the tone of this letter that we would.

Q. What in that telegram indicates to you that you were going to receive something further?

A. There was no—first, it says here that Dr. Robinson—“from the decision of the Washington State Medical Association by which Dr. Robinson was expelled.” The Washington State Medical Association had made no decision for expelling Dr. Robinson, except in that his membership was automatically dropped when he was expelled from the local society.

Number two, this merely says the action was sustained, the appeal was sustained. It gave no reason whatsoever, he didn't tell us where we stood at all. We felt as though that we should be given a reason why. We asked our legal counsel and they said, “Well, this is the most peculiar type of a decision. Surely, something will be following to say why.” What is the status? Do you refer it back to the membership for retrial? Tell us what we are supposed to do. We did not receive that until later.

Q. Well, now, Dr. Tompkins, the telegram states without equivocation, does it not, it says here, “was expelled from membership in the Washington State Medical Association and the Walla Walla County Medical Society is sustained.” Now, that is perfectly clear, is it not, that it relates to both? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Was that not considered by the trustees at the time? A. Certainly.

Q. And they decided that it did not apply, is that correct? A. No.

Q. Well, what steps did you take to clarify the matter?

A. I believe the president of the society wrote to the state association and also to Dr. Cunniffe, and I believe to the AMA officially, to the legal department. Now, I don't know whether all three of those letters went [1761] out, but at least two of them did, asking for a clarification and the reasons for the decision. Our big question was why.

Q. Referring to your deposition, Dr. Tompkins, you say:

“We believed the telegram, we didn't question the telegram at all, but we did want confirmation.”

Then the question was asked:

“What would you have done in the event it had been a signed letter, confirmed properly? You would have taken the same action, wouldn't you?”

And you answered:

“If they had sent us a signed letter in the first place, instead of a telegram, and stating the reasons why the procedure—where our procedure had been reversed, we would have reinstated Dr. Robinson at the next meeting.”

Do you remember that? A. Yes.

Q. And is that your testimony today?

A. I think so.

Q. Then, it was just a matter that this came to

(Testimony of Morton W. Tompkins.)

you in the form of a telegram instead of in the form of a signed letter?

Mr. Kimball: That isn't what the witness [1762] said.

Mr. Sembower: Well, now, counsel, wait until I finish my sentence.

Mr. Kimball: Wait until I make my objection.

The Court: I think you should fairly state the facts. He says if they stated the reasons in the letter.

Q. (By Mr. Sembower): And stated the reasons in the letter, then you would have reinstated him, is that correct?

A. I think so. That is my opinion, I don't know what the society would have done.

Q. Now, Dr. Tompkins, did you then make a telephone call to the American Medical Association?

A. I did.

Q. When did you make that call?

A. April 8, 1952.

Q. On what authority did you make that telephone call? A. My personal authority.

Q. Didn't have any authority from the society or the state association? A. No.

Q. And who did you get on the line when you called Chicago? A. Eventually, Dr. Howard.

Q. Who did you call in the first place?

A. Dr. Lull.

Q. And just a moment before I go into that conversation. I would like to refer to an exhibit. I have here, Dr. [1763] Tompkins, Plaintiff's Exhibit

(Testimony of Morton W. Tompkins.)

164, which is a letter from Edward L. Rosling to Dr. M. H. Robinson, and this letter is dated February 14, 1952, and states:

“Dear Sir:

“The Executive Committee of the Washington State Medical Association has considered your letter of February 4, 1952, at its meeting held February 13, and the writer was directed to answer your letter.

“There are just two requisites of membership in the Washington State Medical Association. Article III, Section 2 of the constitution provides that the active members of the state association are all the active members in good standing in the component societies from whom or on whose behalf the required annual dues have been received by the secretary-treasurer of the State Association. Inasmuch as the Judicial Council has reversed the decision of the Walla Walla County Medical Society, expelling you from membership, your status as a member of the Walla Walla society is the same as if the action of the society expelling you had never taken place. The next question is whether or not you are a member in good standing. This depends on whether your dues [1764] are paid. If your dues have been paid in the local society, and if your dues have been received by the secretary of the state association for 1952, you are a member of the Washington State Medical Association.”

Do you recall seeing a copy of this letter?

A. I don't know. I believe Dr. Robinson cir-

(Testimony of Morton W. Tompkins.)

cularized the board of trustees with a copy of this at some time in March. I am not sure.

Q. Well, was that discussed by the members of the board, if you recall? A. I don't recall.

Q. Do you recall anyone getting in touch with Mr. Rosling and asking him, perhaps, for clarification of this, or was it definite enough as it stood?

A. I don't know. I didn't contact Mr. Rosling.

Q. As a matter of fact, however, no action was taken pursuant to this opinion, was it?

A. No.

Q. Did Dr. Robinson then tender his dues to the local society? A. Yes.

Q. And what happened to the dues?

A. They were not acted upon.

Q. Just held? [1765] A. Yes.

Q. Well, now, as to your telephone conversation to Dr. Lull, which was referred to Mr. Howard, I believe, do you recall the nature of that conversation? A. Yes.

Q. You did take a wire transcription of that, is that correct? A. I tried.

Q. And what did you do with that wire transcription? A. Used it for correspondence.

Q. Well, I mean this particular wire?

A. You mean how did I take it?

Q. I mean after you had the transcription of this telephone conversation, what did you do with it?

A. I took it to the medical society meeting that evening.

(Testimony of Morton W. Tompkins.)

Q. You had the conversation on the afternoon of April the 8th? A. Yes.

Q. And you went to the society meeting on the night of the 8th? A. Yes.

Q. And you played this wire? A. Yes.

Q. Was it a clear transcription or what about it? A. No it was very poor. [1766]

Q. What became of the wire transcription finally? A. I used it for correspondence.

Q. You mean you cleared it off, the message? You mean you cleared the wire and used it over again? A. It actually is a tape.

Q. Why did you play the transcription at the meeting?

A. Well, I had hopes that I could transfer directly to the members of the society the results of the conversation. I did not play it from the time I took it until I took it to the meeting.

Q. Now, you were no longer president of the society, were you? A. No.

Q. The president, I believe, by this time was Ralph S. Keyes? A. Yes.

Q. Why were you functioning, then, in this capacity of contacting the American Medical Association?

A. Whenever anything came up regarding this case, because I was the presiding officer at the time, and this is carried down to the present time, I have been the official representative of the medical society working with counsel in preparing any materials, to correct materials, and so on, as it concerned this

(Testimony of Morton W. Tompkins.)

matter, primarily because I was dealing with it first hand and knew [1767] details better than anyone else.

Q. Dr. Tompkins, tell us, in substance, what you said to Dr. Howard and what he said to you, if you recall?

A. I called Dr. Howard, he told me that Dr. Lull was in Florida on vacation. He said, "Can I help you?" I says, "We have just received a so-called decision, unsigned, on blank paper, regarding the findings of the Judicial Council on the appeal of Dr. Robinson from the expulsion of the local medical societies."

I said, "At that hearing, we did not have adequate notice, the hearing was not conducted in a manner in which all of the facts pertinent were brought out, and this was definitely shown by the fact that they gave as the reasons for their decision that we did not follow Steps 1, 2 and 4 of our constitution and bylaws, so we felt that we had been given the run around that Dr. Robinson had been successfully able to interject another completely separate subject in the hearing at Los Angeles, and the matter for which he was expelled had nothing to do with the matter that he was arguing down there."

I asked him if there was any way possible that a rehearing or an appeal to a higher body could be made.

Q. And what did he say to you?

A. He told me at that time, he said, "I don't know, you [1768] might petition the Judicial Coun-

(Testimony of Morton W. Tompkins.)

cil for a rehearing." He says, "They are going to meet within—" I believe he gave me a date of approximately two weeks. He said, "If you will have some of these things that you have told me about and exemplify them somewhat, have those in my hands, I will present them to the board." He said, "What is your present situation there?"

Q. That is what Dr. Howard said to you?

A. Yes. I said, "At the present time there is considerable concern as to whether Dr. Robinson is in good mental health. In fact, there are some of us who are somewhat fearful of our own safety."

He said, "You go ahead and prepare these materials, get them here within ten days to two weeks, and I will present them to the Judicial Council."

Q. Did Dr. Howard have any suggestions during the interim as to how you might protect yourselves?

A. No.

Q. Now, Dr. Howard gave you his suggestion on this, so far as you know, on the basis of what you were telling him, is that correct? A. Yes.

Q. Did he tell you that there was any established procedure for a rehearing before the Judicial Council? A. He didn't mention it. [1769]

Q. Did he state that this was the first rehearing application that had ever been made? A. No.

Q. No conversation of that kind? A. No.

Q. Now, did you also state to Dr. Howard that the society was contemplating secession from the American Medical Association? You didn't mention that a moment ago.

(Testimony of Morton W. Tompkins.)

A. I don't recall whether that came into that particular conversation or not, but I know that at that particular time, or during this interval of between February 1st and March 29th, or some such date, that there had been conversations to the point that perhaps the local medical society would withdraw completely from the state association and the AMA.

Q. Who had participated in those conversations?

A. Specifically, I don't know, but I know that Dr. Page and I were two.

Q. Did Dr. Lange participate in those conversations? A. I don't know.

Q. Where did those conversations take place?

A. Here and there over town, wherever two doctors happened to meet.

Q. Did any of these conversations take place at trustees' meetings? [1770] A. No.

Q. The unofficial meetings that you have referred to? A. No.

Q. After the trustees' meetings, if you recall?

A. They may have, but I doubt it.

Q. Did Dr. Stevens participate in any of those conversations? A. I don't know.

Q. Dr. Yengling? A. I don't know.

Q. What about Dr. Keys, was he present among those conversations?

A. Probably, but I don't know.

Q. Dr. Ralston? A. I don't know.

Q. Dr. Lange, do you know whether he did?

(Testimony of Morton W. Tompkins.)

A. Other than Dr. Page, I don't know.

Q. Only you and Dr. Page are the only ones you recall? A. Specifically.

Q. Did you transmit this attitude to the state association in any way? Did you tell any of them about it? A. No.

Q. I have here the deposition of Ernest B. Howard, taken upon written interrogatories before Leon M. Golding, Notary Public for the County of Cook, State of Illinois, [1771] on Monday, March 19, 1956.

Mr. Sembower: It is very short, your Honor, if I may read it.

The Court: Do you have any objection to this form of reading it, gentlemen?

Mr. Kimball: No.

Mr. Rosling: How many pages are there?

Mr. Sembower: Well, there are about four pages, very short.

“Ernest B. Howard, having been first duly sworn, deposeth and saith as follows:

“Interrogatory No. 1. State your name and address.

“A. Ernest B. Howard, 535 North Dearborn Street, Chicago, Illinois.

“Interrogatory No. 2. Do you hold an official position in and for the American Medical Association, and if your answer is “Yes,” what is that position and how long have you held it?

“A. Yes. I do. The position is assistant secretary, beginning April 1, 1948.

(Testimony of Morton W. Tompkins.)

“Interrogatory No. 3. Have you held an official position in connection with the Judicial Council of the American Medical Association during the last five years, and if your answer is “Yes,” [1772] what position or positions have you held and for what periods?

“A. Yes. Since December, 1950, I have been a member ex officio, without the right to vote, of the Judicial Council, as well as all other standing committees of the House of Delegates and the Board of Trustees.

“Interrogatory No. 4. In that certain deposition of your testimony taken upon oral interrogatories in the case of Robinson vs. Lull, et al., Civil Action No. 55 C 1053 in the District Court of the United States for the Northern District of Illinois, Eastern Division, on December 15, 1955, at Room 1414, 105 South LaSalle Street, Chicago, Illinois, the following questions were propounded to you and you gave the following answers at page 10 of the transcript, did you not?

“(a) Q. Dr. Howard, when did you first hear of Dr. Miles H. Robinson, if you recall?

“A. I don’t recall exactly when I first heard of him. It was first brought to my personal attention by the telephone call from Dr. Tompkins. I had heard something about it before he he called, but I don’t remember when I had first heard [1773] about it.

“(b) Q. That was the telephone call of what date?

(Testimony of Morton W. Tompkins.)

“A. I don’t know the exact date.

“(c) Q. Was that the call around the, on on or about April 8, 1952?

“A. I don’t know. It could have been then. It was several years ago, I recall that.

“(d) Q. You say that Dr. Tompkins called you on that date. Do you remember what Dr. Tompkins said to you at that time?

“A. I remember generally. I should like the record to be clear, he called Dr. Lull. Dr. Lull was out of the city or not in the office at that time, so the call was transferred to me. I do not recall, I am quite sure that is the record. He didn’t call for me, but I took the call as assistant secretary.

“He called about the action of the Judicial Council in reversing the State Society with respect to Dr. Robinson, and expressed, as I recall it, and my recollection is vague because this was [1774] one telephone call several years ago, but as I recall it, he expressed the deep concern of himself and his colleagues at this action of the Judicial Council in reversing in effect their action with respect to Dr. Robinson. And he wondered if there was anything they could do further, was there anything that the Society could do in view of the fact that they felt the Judicial Council had acted precipitantly and unfairly, and had not given them ample opportunity to prepare the case.

(Testimony of Morton W. Tompkins.)

“In effect, he was protesting the action and wondering if anything could be done.

“As I recall it, I told him that he could petition for another hearing if he thought he had been treated unfairly.

“(e) Q. Did he tell you why they were particularly concerned about the decision of the Judicial Council? You used the words he was concerned about it.

“A. He was deeply concerned, and he expressed the opinion that the Society [1775] might even withdraw from the Association if the opinion, if that was the final and irrevocable opinion.

“I now ask you those same questions in this case. Are your answers to these questions the same? If not, what is your present testimony and why are you changing it?

“A. My answer would be the same to those questions.

“Interrogatory No. 5. Has anyone discussed these interrogatories with you. If your answer is “Yes,” state who that person or those persons were; when and where and in what manner the discussions took place, and in detail what was said to you, and what you said.

“A. No.” [1776]

* * *

Q. Dr. Tompkins, yesterday I believe you testified that there had been a serious grievance handled

(Testimony of Morton W. Tompkins.)

recently by the grievance committee since the Robinson case which had given rise to a lawsuit. Is your memory precise on that?

A. I know only what some other doctors told me. I had no part in the proceedings.

Q. You didn't have any opportunity, perhaps, last night to check into that and see if that is true or not? [1778]

A. I saw no necessity.

Q. Do you think there is a possibility that that was not occurred?

A. No.

Q. You are certain that it has occurred, then?

A. Yes.

Q. Dr. Tompkins, I show you Plaintiff's Exhibit 221, which is a copy of the opinion, I suppose we would call it, of the Judicial Council for the December 2, 1951, hearing in Los Angeles in Dr. Robinson's appeal, which bears the certification of George F. Lull, the Secretary of the Judicial Council of the American Medical Association, and ask you if you have seen that before?

A. Yes.

Q. Isn't it a fact that Dr. Robinson sent you a certified copy of this?

A. I don't know.

Q. You don't recall whether he did or not?

A. I was not president at the time.

Q. You mean you were not president at the time it was sent to you?

A. Yes.

Q. You mean that you don't know whether your mail had not been delivered or something of that sort?

A. I did not receive that personally. At that particular [1779] time, I was a member of the board

(Testimony of Morton W. Tompkins.)

of trustees, Dr. Keyes was president, and all communications of that type would have gone directly to Dr. Keyes.

Q. Oh, I see. So that this was sent to Dr. Keyes, to your knowledge? A. Yes.

The Court: What was that number, please?

Mr. Sembower: Plaintiff's 221.

Q. Did Dr. Keyes show it to you?

A. Yes, it was presented to the board of trustees.

Q. And did that modify your attitude at all with respect to whether the decision of the Judicial Council was a definite one or final one? A definite one, I will say first? A. Yes.

Q. Well, what was that modification?

A. It was because of that decision that prompted my telephone call to the AMA at the time I talked to Dr. Howard. It was very obvious in the conclusions that they had drawn that they had lost complete sight of the reasons for the expulsion and had mixed in other completely extraneous matter at the Los Angeles hearing.

Q. In other words, you just didn't agree with this opinion at all, is that correct?

A. It was completely fallacious. [1780]

Q. And you sought to then obtain a rehearing?

A. Yes.

Q. This did not influence you in any way to take steps to reinstate Dr. Robinson.

Now, referring to your deposition in this case, Dr. Tompkins, I find on Page 61 this colloquy. I was questioning you at that time about whether

(Testimony of Morton W. Tompkins.)

there was a provision of the by-laws which had since been amended, an amendment of the bylaws, that is, of the state and local society, providing that a doctor, pending an appeal of a suspension or dismissal from the society, expulsion, would be held in status quo. There is some comment between the attorneys at this point which makes it a little difficult to pick up the questions and answers, but your answer, as I read it here, is:

“No, I am not, but I am aware that our own bylaws stated that so long as there is any appeal, the sentence imposed shall stand and that”——

And I asked you:

“That is your local bylaws?”

And you answered:

“And the state also has been amended and this last year”——

And I asked you: [1781]

“Is this in the printed bylaws?”

And you say:

“The state bylaws were amended at this last state”——

And I say:

“The state bylaws?”

And you say:

“Yes, and it is in our local bylaws, too.”

And I asked you:

“Did Dr. Howard know that when you spoke with him?”

(Testimony of Morton W. Tompkins.)

And you say:

“I don’t know, it wasn’t brought up.”

Now I ask you, has there been amendment to the local bylaws which provides that a doctor shall be held in status quo pending his appeal?

A. I think so.

Q. Do you recall when that amendment was adopted?

A. I am not sure regarding the local society. I am certain about the state.

Q. When was the state amendment adopted, then?

A. Either in 1955 or 1954, at the House of Delegates meeting.

Q. And you believe that such a local bylaws was adopted, [1782] but you don’t remember the exact date of that? A. Yes.

Mr. Kimball: If the Court please, I believe that is immaterial. It is far past the dates involved here.

Mr. Sembower: Well, of course, I didn’t know until he gave us the date and I was interested in his state of mind at this time.

The Court: All right.

Q. (By Mr. Sembower): In your telephone conversation with Dr. Howard, Dr. Tompkins, was there any part of the conversation related to the situation in which Dr. Robinson was at this time with respect to his hospital practice and his general practice, if you recall?

A. I don’t recall, but I don’t believe so.

(Testimony of Morton W. Tompkins.)

Q. That is, you don't recall telling Dr. Howard that Dr. Robinson had no hospital privileges?

A. No.

Q. Dr. Tompkins, I find in your deposition on Page 63, the deposition in this case, this reference to the record which had been prepared after the hearing in Dr. Ralston's office. That this was the November 21, 1950, proceeding. You state:

"Yes, after the hearing in Dr. Ralston's office, the transcript had some jumbings of statement and there were typographical [1783] errors and it was not first-class recording, if you wish to call it that, and I invited Dr. Robinson to go over that transcript with me to make it more clear as to who said this and who said that and what was said, but I said, 'We cannot change its context of any statement.' I had an appointment with Dr. Robinson and, unfortunately, one evening I had to call and cancel it. I had another appointment with Dr. Robinson which he failed to meet.

"So then I saw Dr. Robinson again and whether it was his own personal attitude or what, he didn't seem to be particularly anxious to sit down with me and go over this transcript, so I said, 'Then I will have to correct it as I can.' "

And my question:

"And did you make corrections?"

And your answer:

"I made corrections only in putting punctuation in here and there where it was obvious"——

And my question: [1784]

(Testimony of Morton W. Tompkins.)

“Did you change any words?”

Your answer was:

“No, no. That is the reason that the transcript does not read as smoothly as it might, because I did not make any particular change in it at all. Very, very slight.

My question:

“In other words, it isn’t exactly a record”——

Your answer:

“Yes, the copies you have here are the exact ones because they were never retyped.

And then the question:

“Well, now, we found some of them here that had bond paper on several pages, Dr. Tompkins. I wonder if you could shed some light on where they came from?”

And Mr. Kimball interposed:

“He is referring to this particular copy which I had turned in very early, and it was pointed out that one page was different from the other copies. It was like this on this set.”

And you answered. [1785]

“I haven’t any idea and”——

Have you had an opportunity to refresh your recollection at all with respect to those transcripts, Dr. Tompkins? A. In what particular respect?

Q. Well, I just wondered, do you remember how extensive your alterations were? Is it still your recollection as you testified here?

A. The testimony was correct. The alterations were very slight. There was actually only one area

(Testimony of Morton W. Tompkins.)

in the transcript which did not give clearly the context of what had been testified, and that involved the play of conversation that had occurred at the time when Mr. Noel Edwards—Dr. Robinson denied that he had told Mr. Noel Edwards, he had mentioned the word “syphilis” and Mr. Edwards’ answer and then a little bit right in there. The rest of the transcript was reasonably good, and that was the particular part that I wanted to go over with Dr. Robinson to correct, and, lacking Dr. Robinson’s cooperation, I corrected some typographical errors and left that pretty much the way it was, and I think you can see any potential changes that may have been made by the differences in the two exhibits that are already admitted.

Q. Well, you and Dr. Robinson did make some endeavor to [1786] get together on this, did you not?

A. Well, I made an effort and Dr. Robinson was co-operative to the point that he actually made two appointments with me. Unfortunately, I am an obstetrician and had a delivery over which I had no control, I had to cancel one just a few minutes before I was to arrive at his home. The next appointment was approximately two or three days later and he just never showed up for that one.

Q. Well, now, Dr. Tompkins, you did most of the work in preparing the appeal, that is, the application to the Judicial Council for a rehearing, is that correct? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And I understand from your prior testimony that this took about two solid weeks of your time?

A. Yes.

Q. Now, during this time you did have collaboration and assistance of the state association, is that correct? A. Yes.

Q. And in this connection, I refer to Exhibits 197, 199, Plaintiff's Exhibits 201, 202, 203, 204, 205 and 217, which appear to be copies of exchanges of correspondence between you and the state people or correspondence within the state association referring to your endeavors in this connection.

If you would like to leaf those through, I would like [1787] to ask you if there were any other correspondence that you had or telephone calls that are not recorded here?

A. I have never seen this letter to Dr. Benson from Mr. Rosling before.

Q. For the record, this is Plaintiff's Exhibit 202. All right, I will ask you a question or two about that.

A. So far as I know, these represent the entire correspondence.

Mr. Sembower: Well, I think rather than to take the time, then, with the witness' comment, I will let Plaintiff's Exhibit 202 speak for itself.

The Court: All right.

Q. (By Mr. Sembower): Dr. Tompkins, I find in your deposition this statement and ask you if you recall giving this testimony. You were being asked about the custom, if there was one, in the

(Testimony of Morton W. Tompkins.)

locality with reference to reporting syphilitic patients to the public health office, and you stated—I think I will give you the questions and answers far enough ahead so you know what the setting is here. I say:

“Q. Have you had very many of them?” meaning syphilitic patients,

“Over the last few years? [1788]

“A. No, we don’t see much any more.

“Q. Did you report those?

“A. Yes. Not by name, only by number.

“Q. Have you reported all of them in the past?

“A. Yes.

“Q. Without exception? A. Yes.

“Q. Even though you have them as patients and under treatment, you report?

“A. Even though they are so-called tertiary cases, not infectious, the state likes to have—they don’t communicate it, but they like to have all cases reported.”

A. I can’t hear you, I’m sorry.

Q. Oh, I’m sorry. (Reading continued.)

“A. Even though they are so-called tertiary cases, not infectious, the state likes to have—they don’t communicate it, but they like to have all cases reported.

“Q. Is there a custom followed, not only the law, and you know what that is, but is there a custom followed as to reporting [1789] those among the doctors in this community?

(Testimony of Morton W. Tompkins.)

“A. I don’t think the doctors in this community as a whole report very well.

“Q. That would be your impression of the custom as it is followed here?

“A. Yes, at least that is the impression I get. I have always reported all of my cases, but I have only once reported a patient by name, and that case was a patient who deliberately stopped treatment before his treatment was up and I reported him by name to the health department immediately. He was due for a treatment, he failed to come in. He was notified to come in for treatment, he failed to come in. He was notified that unless he came in for treatment I would have to turn the case over to the health authorities.”

Do you remember giving that statement?

A. Yes.

Q. Now, after you had prepared the petition for a rehearing, you forwarded that to the American Medical Association, is that correct? [1790]

A. Yes.

Q. And I believe at that time you sent in a covering letter dated April 21, 1952, to Dr. Howard?

A. Yes.

Q. That is Plaintiff’s Exhibit 206. Then I believe that after you had sent the material in to the Judicial Council, that a meeting was held by the Council on April the 25th, 1952, at which this matter was considered and the rehearing was granted, is that correct?

(Testimony of Morton W. Tompkins.)

A. I only know that the rehearing was granted.

Q. And you didn't attend any meeting at that time? A. No.

Q. Now, I would like to ask you a few things about this letter of the 21st. You stated:

“In confirmation of our telephone conversation of April 8th, and at your suggestion, I have prepared the enclosed material. In view of this material we are very hopeful that the judicial council will consider the matter thoroughly. Regardless of their decision, would you please notify me by telegram what that decision is?”

Now, I wanted to ask you about that, Dr. Tompkins. You seemed to be disturbed about the telegraphic [1791] notification on the first decision, but in this instance you didn't have any concern about that being a valid method of communication.

A. I think your inference is wrong.

Q. Well, I would like to know why. It seems to me there is a difference here and I just wonder what the difference is?

A. A marked difference. Our concern on the original telegram was not on its authenticity, but on the fact that we had no reasons given whatsoever as to why and no procedures instructing us as to what our future actions would be. We were left completely in the dark. On this particular thing, I asked for a specific bit of information as to whether or not the petition for the rehearing was granted.

Q. Now, Dr. Tompkins, at the hearing in Los Angeles, was anything stated there about the de-

(Testimony of Morton W. Tompkins.)

cision coming to you in any special form other than a telegram, if you recall?

A. I don't think it was mentioned.

Q. Wasn't mentioned at all. All right, now:

"Should the judicial council decide to let the decision stand, the local society wishes to act at once."

Now, what did you mean by "act"? What kind of [1792] action was contemplated?

A. The April 7th meeting—April 8th meeting—was scheduled primarily to reinstate Dr. Robinson. Following my telephone call and with the instruction from Dr. Howard, we tabled that action, or rather did not bring it up in view of the permission, so to speak, that we had to present a petition for rehearing. Had a rehearing not been granted, we wanted to know so we could act on the reinstatement at once.

Q. Well, now, could it have been possible that the society was thinking of preferring new charges against Dr. Robinson at that time? A. No.

Q. Or renewing the old ones? That wasn't in contemplation at all? A. No.

Q. Well, then, let me ask you now, I read last night Dr. Howard's version of his understanding of your telephone conversation. Now, he was vague about many details of it, but he was precise about one, it seemed to me. That was that you had said that there was a strong possibility that the society would secede. Now, might he not have inferred from this statement here, without any additional expla-

(Testimony of Morton W. Tompkins.)

nation as to what you planned, that that was the action which the society expected to take? [1793]

A. I don't know.

Q. Did that ever occur to you at this time?

A. I don't know.

Q. Did it occur to you at this time that this statement might, in consideration of your conversation, sound like a statement by the society that it would withdraw, possibly, if this decision were not favorable? A. I doubt it.

Q. Then continuing:

“There were several points of information brought up in the telephone conversation which I cannot mention in this letter. I do not wish the centered enmity of Dr. Robinson to be pointed toward me. There are several of us here who are frankly fearful of direct violence to us or our families.”

Now, Dr. Tompkins, what did you have in mind—well, let me ask you specifically, what were the points that you brought up in the conversation that you did not include in the letter?

A. I think I testified on that yesterday. I recorded the telephone conversation.

Q. Well, yes——

A. I testified yesterday that at the time of that conversation [1794] there were many of us that felt that Dr. Robinson was showing evidence of mental illness and there were times that we were sometimes fearful of our personal safety, and that was a very, very true and literal statement.

(Testimony of Morton W. Tompkins.)

Q. Well, now, what did you say to Dr. Howard along those lines?

A. That is exactly what I said.

Q. And then you reiterated it in this letter here?

A. Yes.

Q. Why didn't you set it forth in this letter?

A. I didn't particularly want it to be written down that I was saying that Dr. Robinson was showing signs of mental illness.

Q. Why didn't you want to write it down?

A. Some things are best left unwritten.

Q. Some things may be also better left unsaid, isn't that true? Didn't you say this to Dr. Howard?

A. I did.

Q. And at the time that you said it to him, did you know that he also was an ex officio member of this Judicial Council? A. No, I did not.

Q. Would it have made a difference to you had you known that? [1795]

A. I think perhaps it might, I don't know.

Q. You think perhaps you wouldn't have said that? A. It is a possibility.

Q. Why would you not have said it to him if you had known he was an ex officio member?

A. I would——

Mr. Tuttle: If the Court please, that is asking for the witness to speculate on what might have been done. He doesn't know what——

The Court: Well, he may answer.

Mr. Rosling: Furthermore, I think counsel is in error when he says the assistant secretary of the

(Testimony of Morton W. Tompkins.)

association is an ex officio member at the time these hearings were held.

Mr. Sembower: Do you you have that deposition?

The Court: Howard's deposition?

Mr. Rosling: I don't think Dr. Lull was even an ex officio member of the Judicial Council.

The Court: What is the date of this letter or this communication of yours to Dr. Howard?

Mr. Sembower: The letter is April 21, 1952, Plaintiff's Exhibit 206, from Tompkins to Howard.

The Court: Yes. The deposition shows, "Since December, 1950," he says, "I have been a member ex officio, without the right to vote, of the Judicial Council." [1796]

Mr. Sembower: Yes.

Mr. Rosling: Is that Howard or is that Lull?

Mr. Sembower: No, that is Howard.

The Court: This is Howard, Ernest B. Howard.

Mr. Sembower: Would counsel like to see the deposition?

Mr. Rosling: No, I will just take your statement for it.

Q. (By Mr. Sembower): Would you answer the question, then, Dr. Tompkins?

Mr. Sembower: Would you read the question, please?

(Whereupon, the following question was read: "Why would you not have said it to him if you had known he was an ex officio member?")

(Testimony of Morton W. Tompkins.)

A. In the light of my present position, I don't think that I would have made any statements of the type to Dr. Howard had I known he was connected with the Judicial Council for fear it might have been interpreted as trying to influence the Judicial Council.

Q. Now, Dr. Tompkins, what was the foundation for your comments, for your statements, to Dr. Howard that you and others feared direct violence to you and your families?

A. Dr. Robinson's actions.

Q. What were those actions?

A. And attitudes. [1797]

Q. What were those actions? First, let me ask you—I'm sorry, but I would like to ask you, you say there are several of us here; who does the "us" include?

A. Other members of the medical society.

Q. Well, what other members?

A. I would prefer that you would ask them individually as they testify.

Q. Well, I would like to ask you if you have any who you referred to. You said "us," which makes that a collective term.

A. Well, I can't recall specifically, but I believe Dr. Keyes was one who indicated some such thing.

Q. All right, who was another?

A. I don't recall.

Q. Do you not remember any others than Dr. Keyes?

(Testimony of Morton W. Tompkins.)

A. I would not want to testify that I know of someone else at the present time because I don't remember.

Q. I mean, the reason that you don't want to testify is that you really do not remember?

A. I do not remember.

Q. Well, now, was it more, however, than you and Dr. Keyes? A. Yes.

Q. Was it all the membership in the society?

A. No, I think most of these things, most of these fears, were centered in the ones who were having to deal with [1798] the matter most personally as officers.

Q. Well, now, Dr. Tompkins, what was the basis? You testified a moment ago because you thought he was suffering from a mental illness. Is that characterizing it correctly, or how did you put it?

A. I think that is the way I characterized it.

Q. Now, what was the foundation for saying he was suffering from a mental illness?

A. He was showing what I consider paranoiac tendencies.

Q. You state that using the term technically, do you, as a medical man? A. Yes.

Q. Now, did you know anything from Dr. Robinson's background which would lead you to believe that he might be susceptible to paranoiac tendencies, know of your own knowledge? A. No.

Q. Had you heard rumors, however?

A. Only that he had had a mental illness, or I

(Testimony of Morton W. Tompkins.)

correct that, had had a so-called nervous breakdown.

Q. Now, in your deposition, Dr. Tompkins, you made some reference there, which I will not read the page exactly if you don't care for me to—I mean I am not disposed to read the page exactly—but you made some references there that your wife was very apprehensive of Dr. [1799] Robinson, is that correct? A. That is true.

Q. Now, what was the basis for her apprehensions?

The Court: Would he know that except as they are expressed to him?

Mr. Sembower: I think you are correct.

Q. You also made some references——

The Court: I wouldn't want to undertake to say why women worry.

Mr. Sembower: Yes, that is correct.

The Court: All right.

Mr. Sembower: And it would be hearsay otherwise.

Q. There was some mention made there about the fear on your part and that of your wife for the safety of your children, is that correct?

A. Indirectly.

Q. Well, now, how did that figure into this?

A. It was not the fear directly toward our children, as to what might happen to us or our property.

Q. Oh, you mean you were worried about your property?

(Testimony of Morton W. Tompkins.)

A. If you wish to call a house and a potential fire with our children in it property, yes.

Q. You weren't fearful that your children might be harmed? A. Not specifically, no.

Q. Dr. Tompkins, to what school did your children go at [1800] this time? A. Sharpstone.

Q. Did you know to what school the Robinson children went?

A. Well, at or close to this time they lived very near the high school.

Q. Isn't it actually the fact that they attended the Prospect Point School?

A. They probably did at one time, but at one time I think they probably attended Sharpstone. They were in the Sharpstone district.

Q. Now, Dr. Tompkins, I want to refer the Court particularly to Page 69 in the transcript. Do you remember the statements on 69? I will ask you to read this and ask you if you want to give any additional explanation concerning this testimony here, or whether that testimony stands?

A. Where do you wish me to start?

Q. This is the transcript of Dr. Tompkins' deposition. Starting with the answer here (indicating).

A. (Reading):

"That was a circumstance that led to personal apprehension and to the apprehension in my home. I may as well tell you now, it is no secret, my wife is extremely tense and tight"— [1801]

Q. I am not asking you to read it aloud, Dr. Tompkins; I just asked you to read it to yourself

(Testimony of Morton W. Tompkins.)

and ask you whether there are any changes you wish to——

A. Beg your pardon, I understood you wanted me to read it.

Q. I'm sorry, I didn't mean to convey that impression. A. Now your question?

Q. I am not challenging you about it, Dr. Tompkins, I just want to give you an opportunity to make any changes in your testimony, if you wish to make them. If that stands as your testimony——

Mr. Rosling: If your Honor please, there isn't any testimony yet.

Mr. Sembower: Well, I mean I ask him whether he makes any change in this statement in the deposition.

The Court: Well, how is that to get into the record or be considered by me? I don't know what you are talking about, obviously.

Mr. Sembower: That is true.

The Court: And you may use the deposition for any purpose, it is the deposition of a party, but if you read part of it, then the other side may put in any other part that pertains to the same subject matter.

Mr. Sembower: I am perfectly happy for that to happen and, if I may, I will put this deposition in and give the other party the right to cite it at any time. [1802]

The Court: Of course, you have the right to what amounts to cross-examine this witness. If you want to read that and ask him if he so testified, you

(Testimony of Morton W. Tompkins.)

can do it that way, and you can read it directly into the record.

Mr. Rosling: I think what counsel is endeavoring to do, your Honor, is to get statements into the evidence of something that the witness has learned from his wife, which the Court has already ruled out, and is now endeavoring to get it in in this indirect manner.

The Court: Well, I don't know what it is until it is presented. There is nothing before me so far.

Mr. Sembower: Well, your Honor, my problem here is that I don't want to bring out personal problems, and yet I feel that this passage here is of great significance in the state of mind of this witness.

The Court: Well, there hasn't been great delicacy about personal problems so far in this trial, a great many of them, so I don't see why we should start now.

Mr. Sembower: All right, then, I will read this to Dr. Tompkins and ask him if he has any comment about it:

“That was a circumstance that led to personal apprehension and to the apprehension in my home. I may as well tell you now, it is no secret, my wife is extremely tense and tight. My wife has [1803] anxiety tension, which is, oh, nervousness, if you wish to call it that, and in 1949 required the care of a psychiatrist for about two weeks in order to teach her how to relax enough to face the ordinary problems of life. We have two healthy, husky, vigorous, normal boys and they drive her nuts and

(Testimony of Morton W. Tompkins.)

there is the point of tension in our home. My wife does not have the background, emotional background, to hold up under stresses and strains, and when she hears rumors here or there, they were more than rumors, call them rumors even though they were rather widespread, with her particular emotional background, I had that to deal with. So I have a very personal problem which maybe some of the other doctors don't have, and where the rumor came from, I don't know now, but when the rumor came out that one of Dr. Robinson's boys had had difficulty and the police or the sheriff's office had picked him up or they had theoretically traced a couple of cases of attempted arson to him, she became [1804] worried for fear such a thing might be involved in our home just because of association of our children in school.

“Q. Did you make any investigation of that rumor to see what the true facts were?”

“A. No, I merely tried to quiet her down.

“Q. Might it not have quieted her if you had got the facts on it?”

“A. I think she got the rumor from—well, I don't know.”

Q. Now, Dr. Tompkins, did you make that statement? A. Yes.

Q. Continuing with the letter, Dr. Tompkins:

“Since Dr. Robinson's expulsion from the society, he has been expending considerable effort to build up as friendly an attitude toward himself as possible outside Walla Walla. He has circularized many

(Testimony of Morton W. Tompkins.)

of the doctors of the state as well as most of the lawyers within a 200-mile radius with letters and voluminous correspondence having only his side. These people can and do become sympathetic to his arguments. He has finally reached a lawyer who is willing to consider his [1805] case. However, this lawyer very markedly modified his attitude after talking to one of our members and hearing a few of the vital points.”

Now, Dr. Tompkins, who was the member who talked with the lawyer? A. Walter Cowan.

The Court: Who was that? Walter——

A. Walter Cowan.

Q. (By Mr. Sembower): And who was the lawyer? A. I don't know.

Q. (Reading continued):

“However, this lawyer very markedly modified his attitude after talking to one of our members and hearing a few of the vital points. Should we be sued, and it is very likely that we shall be, regardless of the outcome of this appeal, the enclosed brief will be the fundamental basis of our defense. The first two pages only constitute the appeal. The State Association has co-operated fully in submitting some of the material presented. I have been working steadily since our telephone conversation, even at the sacrifice of much of my [1806] professional work, in order to prepare this brief. The thirteen days consumed have barely been sufficient and I believe supports our contentions in the brief.”

(Testimony of Morton W. Tompkins.)

Dr. Tompkins, did you receive any response to this letter? A. Yes.

The Court: What is the number of that letter, Mr. Sembower? You gave it before, but I didn't get it.

Mr. Sembower: That is 206.

The Court: All right.

Q. (By Mr. Sembower): When did you hear a response to that letter?

A. I am not sure of the date we were notified that the Judicial Council had granted the rehearing.

Q. Dr. Tompkins, to your knowledge, did Dr. Robinson have the opportunity to present anything to the Judicial Council on the matter of the rehearing?

A. There is evidence that has been presented here that indicated he had notice that a rehearing had been granted and was offered the opportunity of presenting a brief.

Q. What I mean is with respect to the rehearing itself, did you give Dr. Robinson any notice or the society that a petition for rehearing had been filed?

A. No. [1807]

Q. Now, Dr. Tompkins, I have here Plaintiff's Exhibit 232, which is a letter from you to Mr. Ralph W. Neill, who is Secretary of the Washington State Medical Association, dated June 26, 1952, in which you state:

“Dear Ralph:

“Dr. Keyes has sent the following wire to Dr. Lull and Dr. Cunniffe:

(Testimony of Morton W. Tompkins.)

“ ‘Dr. Miles H. Robinson of Walla Walla, Washington, filed suit yesterday in the amount of \$134,500 against the Walla Walla County and Washington State Societies.

/s/ “ ‘RALPH S. KEYES, M.D.,
“ ‘President, Walla Walla
Medical Society.’

“All further contacts with the AMA will be thru your office at the suggestion of Dr. Benson. You will undoubtedly be served within a few days with your copy of the charges. Our local hope is that a copy of this suit will be placed in the hands of each of the Judicial Council members before their decision is written.”

Now, Dr. Tompkins, what did you mean by “our local hope is”? [1808]

A. The hope of the members of the local medical society.

Q. What did you think that the effect of that would have?

A. I would have to give you some background on that.

Q. Well, it seems to me that you could answer. I don't want——

A. Your Honor——

Q. ——a dissertation.

A. At the time of the second hearing before the Judicial Council, we had a very orderly hearing and at that time I presented positive evidence to the members of the Judicial Council that the local society had not violated any of its provisions of its

(Testimony of Morton W. Tompkins.)

constitution or bylaws in the procedure during which Dr. Robinson was expelled. As each point was presented, I went around and asked the question of each of the members of the Judicial Council, "Gentlemen, are you satisfied that we followed our procedures? We have the evidence here that we did so." There was a short discussion and they conceded that the local society had followed all of their procedures conscientiously; that the only variation—

Q. When did this occur, this conversation you are just referring to?

A. This is the procedures of the second hearing before the Judicial Council.

Q. And the point is you talked to each of the individual [1809] members after the hearing was concluded?

A. During the hearing.

Q. Well, you just said you walked around and talked to them.

Mr. Tuttle: He walked around in the hearing.

A. No, I was standing by the table.

The Court: He means he went around—

A. I went right around the table.

Q. (By Mr. Sembower): Oh, I see; all right.

A. Person by person, doctor by doctor.

Q. Yes.

A. And that is exactly the way I did it. At the end of that, there was an informal discussion or formal discussion, if you wish to call it that, amongst the members and they admitted that the local society had not violated any of their rules and regulations,

(Testimony of Morton W. Tompkins.)

but there was still the technical point as to whether or not the authority or whether the legality of the state grievance committee was valid because at that time the state grievance committee had their actions reviewed by the board of trustees. The entire decision hinged on that one point.

In the face of this suit, we wished to have their decision, if they were going to write one, if they were going to uphold the reversal, was going to be upheld on [1810] that point.

Q. Now, what was this date?

A. And so that the local society would be absolved.

Q. What was this date?

A. This was, I believe, the June 7th hearing of the Judicial Council.

Q. Yes. A. 1952.

Q. No suit had been filed then, had it?

A. No. I believe the suit was filed about June 20th or something.

Q. Did you just say that you told the Judicial Council a suit was going to be filed?

The Court: No, no.

A. No.

Mr. Sembower: All right.

A. No.

Mr. Sembower: All right.

The Court: He said they based it on grievance committee procedure of the state and he hoped that after this suit was filed, that if it was to be on that point, that they would make it clear it was on the

(Testimony of Morton W. Tompkins.)

question of state procedure and absolve the local. Is that, in effect, what you said?

A. Correct. [1811]

The Court: All right.

Q. (By Mr. Sembower): Did you suggest to the Judicial Council that a suit might be filed?

A. At that time?

Q. Yes. A. I don't think so.

Q. But you simply suggested to them that you would like for them to cast their opinion in such a way that if suit were filed, that the local society would be absolved?

A. I don't believe suit was mentioned at that time. We wanted to be absolved because we had followed our procedures.

The Court: I didn't understand it that way, Mr. Sembower. I understand what he is telling me now, or is testifying here, is the background of what happened at the hearing in order to explain what he later did. The later communication that he had made reference to the suit.

Mr. Sembower: Oh, I see.

The Court: He doesn't say there was any reference to a suit at the time of the hearing. Is that correct?

A. Not to the hearing, that is correct, your Honor.

Q. (By Mr. Sembower): I wanted to ask you about the hearing, Dr. Tompkins. In addition to what you have told us, who attended that hearing held in Chicago, is that [1812] correct?

(Testimony of Morton W. Tompkins.)

A. Yes.

Q. From the Washington Society and the local society?

A. I was the only representative from the local society. Dr. Benson was there from the state society. I am not sure whether Mr. Rosling was present or not. I believe you have a transcript of that hearing somewhere in evidence here.

Q. I was going to ask you if he was present because I don't think his name appears on the list.

A. I don't recall. I know Mr. Rosling did not go back to Chicago with Dr. Benson and I, and I assume if he were going to be present at that hearing, that probably he would have been on the plane with us.

Q. Well, now, what about Mr. Wynnicoff, was he not there?

A. I don't know Mr. Wynnicoff.

Q. You don't know him at all?

A. I don't, no.

Q. He appears in the list of persons present from Washington. A. I don't know who he is.

Q. What about Mr. Jared, was he there?

A. I don't know.

The Court: What was that last name?

A. Shelby Jared. [1813]

Mr. Sembower: Jared.

The Court: Jared, yes.

A. J-a-r-e-d. The only ones I could possibly as being there were Dr. Benson, myself, Dr. Cunniffe,

(Testimony of Morton W. Tompkins.)

Dr. Buie, and Mr. Hall, Mr. Holloway. Those are the only ones I specifically know as individuals.

Q. (By Mr. Sembower): Did you know Dr. Buie? A. Yes.

Q. Was he there? A. Yes.

Q. Dr. Cunniffe? A. Dr. Cunniffe.

Q. Dr. Donaldson, was he there?

A. I don't know Dr. Donaldson.

Q. He is a member of the Council. Might he have been present?

A. I did not meet any of the members of the Council except—

Q. Dr. Lukins, do you know him, was he there?

A. I don't know.

Q. Dr. Homer Pearson?

A. I don't know him.

Q. Did you have an opportunity, Dr. Tompkins, during the hearing to refer specifically to the Edwards matter and the Brooks matter, the factual situation there?

A. We merely presented the signed statement of Mr. Brooks as evidence that we had received a written complaint, but we did not go into the complaint itself.

Q. Did anyone at that hearing present any testimony or argument on behalf of Dr. Robinson?

A. His briefs were presented.

Q. Was there any reference made by you and Dr. Benson in the hearing to, shall we say, the merits of the case, the factual situation underlying the case here?

(Testimony of Morton W. Tompkins.)

A. We tried to keep that completely divorced, we were talking about procedure.

Q. I now have a list of persons who were present, and I find that the record shows that from Washington, Dr. Benson was present, Dr. Raymond L. Zech. Was he there, do you recall?

A. Zech, Z-e-c-h?

Q. It is S-e-c-k here.

A. It might be a misprint. Yes, I believe he was. He was in Chicago at that time. Also, Ross Wright was in Chicago, he may have been there.

Q. What about Ralph W. Neill, was he there?

A. I don't remember.

Q. That is Ralph Neill of the Washington State Society, the Secretary? A. Yes.

Q. What about Mr. J. W. Greger, he is listed as present? [1815] A. I don't know him.

Q. Mr. Neal Wynnicoff?

A. Don't know him.

Q. These two gentlemen, I understand, are connected with the bureau activity in Washington. Does that refresh your recollection at all?

A. I still don't know Mr. Wynnicoff.

Q. He is connected with the bureau in King County. A. I still don't know him.

Q. The opinion then came out, Plaintiff's Exhibit 234, did it not, subsequent to this hearing?

A. I can't identify it by number.

Q. Well, it is the opinion of the Judicial Council of the rehearing of Dr. Miles Robinson?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. I note here that it says:

“After consideration of the supplementary data presented the Council remains convinced that the procedures providing for disciplinary measures by the constitution and bylaws of the Society extant at the time this case arose were not followed.”

In your interrogation of the Judicial Council members as you confronted them one after the other, did [1816] any of them make that statement to you, do you recall?

A. The only point of conflict was to the legality of the state grievance committee.

Q. And—well, I will let the opinion speak for itself.

Now, what was the next thing that you did after this with respect to the Judicial Council, Dr. Tompkins, if you recall?

A. I don't understand your question.

Q. What did you do next with reference to the Judicial Council? Did you get in touch with the AMA again or the Judicial Council?

A. I came home and waited for that report.

Q. Well, then, what did you do after that?

A. Nothing.

The Court: What is the number of that report?

Mr. Sembower: The opinion is 234.

The Court: Thank you.

Mr. Sembower: 234, Plaintiff's.

Q. Well, see if this refreshes your recollection, then, Dr. Tompkins. I have Plaintiff's Exhibit 239, which appears to be a letter from you to George F.

(Testimony of Morton W. Tompkins.)

Lull, M.D. Do you recall writing that letter to Dr. Lull? A. Yes.

Mr. Kimball: What is the date of it, counsel?

A. July 25, 1952. [1817]

Q. (By Mr. Sembower): And then I have here Plaintiff's Exhibit 240, which is headlined, the title, "Opinion of the Judicial Council, American Medical Association, on the Rehearing of the Appeal of Dr. Miles E. Robinson," and ask you what this is?

A. This is a suggested *same* of an appeal of the type that we wanted from the Judicial Council.

Q. Now, you don't mean appeal?

A. I mean opinion.

Q. Opinion. And did that accompany your letter as an enclosure? A. Yes.

Q. Now, did you submit this to the Judicial Council upon any kind of legal advice of any sort?

A. I don't know.

Q. Did you talk——

A. We had been sued by this time.

Q. And what was the purpose of this, then?

A. The purpose of this was to substantiate in writing the arguments we had presented and the opinions that I had unofficially received at the time of the Judicial Council hearing absolving the local society of any breach of procedure. The opinion that you just showed me did not specifically state why they upheld their reversal. As long as the local society was to be involved in a suit, [1818] we wanted it down in black and white that we had been absolved before the Judicial Council.

(Testimony of Morton W. Tompkins.)

Q. That is, again you weren't satisfied with this opinion that the Judicial Council sent out which ruled again in favor of Dr. Robinson?

A. Not in its form.

Q. So you thought then you would put it in a form which would be acceptable to you, is that correct? A. Yes.

Q. Now, who worked together on this form? Who wrote it?

A. It is very likely that I did.

Q. Oh, is this just an endeavor of your own?

A. No, I suspect from the way that it is drawn up that I had legal counsel with it.

Q. Well, now, who else did you consult with on this form?

A. I don't know, but I am sure I did not do it alone.

Q. Well——

A. It would have to be one or more of the members of the board of trustees at that time.

Q. Well, would it be Dr. Stevens? A. No.

Q. Dr. Yengling? A. No.

Q. Dr. Page? A. No. [1819]

Q. Dr. Lyman? A. No.

Q. Dr. Keyes? A. Probably.

Q. Dr. Ralston?

The Court: Was Keyes then President?

A. Keyes was then President. I doubt Ralston.

Q. (By Mr. Sembower): Well, Dr. Lange?

A. No.

Q. Dr. Beaver? A. Possibly.

(Testimony of Morton W. Tompkins.)

Q. Well, do you remember pretty clearly Beaver did assist you with this? A. I don't know.

Q. Dr. Carlson? A. Very likely.

Q. Dr. Pratt? A. I doubt it.

Q. And Mr. Fullerton? A. No.

Q. Well, then, according to your recollection, you recall clearly that Dr. Keyes worked with you on it?

A. I didn't say clearly, I said he could have. I did not send this out until it had been at least read by two others. Dr. Keyes was President at the time, Dr. Carlson was [1820] Secretary. Dr. Carlson's office was next door to mine and he probably read it. I am not sure, but this was probably shown to our legal counsel.

Q. Mr. Judd Kimball? A. Mr. Kimball.

Q. And did you discuss this at a meeting of the trustees?

A. I don't know. If so, by the time we got to the suit, we were discussing things everywhere.

Q. Well, then, this might have been discussed outside of the trustees meeting at some gathering of the defendants in this suit, perhaps?

A. Probably. Much more likely to be discussed there than the board of trustees.

Q. Well, now——

The Court: Pardon me, does the record show when the state court suit was instituted here?

A. The last part of June, your Honor.

Mr. Rosling: June 26, 1952.

The Court: June 6th?

Mr. Sembower: June 26th.

(Testimony of Morton W. Tompkins.)

The Court: Oh, I thought it was in here some place, but I didn't remember.

Mr. Sembower: Yes, it is in the record some place.

The Court: Yes, all right.

Mr. Sembower: Also, your Honor, merely as a reference [1821] at this point, during the testimony of Dr. Robinson I read into the record the deposition of Dr. Lull of the American Medical Association, pages 123 and 124, which gives the minute entries of the Judicial Council covering this meeting.

The Court: I see.

Mr. Sembower: I won't take time to read it again.

The Court: Yes, all right.

Q. (By Mr. Sembower): Well, now, Dr. Tompkins, this opinion that you have here comes out the same way as the opinion that the Judicial Council prepared? A. Yes.

Q. I notice that the opinion of the Judicial Council is of the appeal of Dr. Miles E. Robinson. That is an error, isn't it? A. Probably.

Q. There is no doubt, however, that was the Dr. Miles H. Robinson. I notice that that is carried over also in—what shall we call this?

A. Says Miles H. Robinson here.

Q. It says Miles E.

A. That is typographical, then.

Q. Just follows this right here? A. Yes.

Q. Well, now, it comes out the same way that

(Testimony of Morton W. Tompkins.)

the opinion of [1822] the Judicial Council came out, doesn't it? A. Yes.

Q. The result? A. Certainly.

Q. But what is the difference in it?

A. The difference is that the Judicial Council report or opinion, if you wish to call it that, does not specify where the error of technique of procedure occurred and it throws the burden of proof upon the local society, when actually the only reason the expulsion was reversed was on the technicality.

Q. That was your understanding of it?

A. Exactly.

Q. Now, in other words, you think that you wrote an opinion which represents a better opinion than the Council itself wrote, is that correct?

A. I do.

Q. All right. What happened to your opinion then? A. It is here.

Q. Well, did the Council adopt your opinion or adhere to its own? A. They ignored it.

Q. Well, they gave you an answer to it, didn't they? A. No.

Q. Oh, just a second. [1823]

Mr. Sembower: I ask that Plaintiff's Exhibit 252 be admitted in evidence.

Mr. Kimball: No objection.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 252.)

Q. (By Mr. Sembower): Dr. Tompkins, I show

(Testimony of Morton W. Tompkins.)

you Plaintiff's Exhibit 252, which is a photostatic copy of a letter dated December 4, 1952, from Edward R. Cunniffe to Morton W. Tompkins, M.D., and ask you if you remember receiving that letter?

Mr. Kimball: Counsel, maybe I can straighten you out on that. That letter wasn't sent to Dr. Tompkins, it was sent to Lull, and then Lull sent a similar letter.

Does that help any?

Mr. Sembower: It doesn't help because the exhibit speaks for itself. I am looking at a photostatic copy of a letter to Dr. Tompkins.

Mr. Kimball: Very well.

Mr. Sembower: Dr. Lull's name doesn't appear here at all.

Mr. Kimball: Very well.

The Court: What was the question, whether he remembers that? [1824]

Mr. Sembower: I asked whether he remembered receiving this letter.

The Court: Oh.

A. I have no knowledge that I ever received this letter from Dr. Cunniffe, but I do believe that I did get a similar letter from Dr. Lull.

Q. Well, I will read—

A. I believe that, I don't know. I don't think I ever received that letter.

Mr. Sembower: I will read this exhibit into the record, Plaintiff's Exhibit 252, photostatic copy of a letter dated December 4, 1952, from Edward R. Cunniffe to Morton W. Tompkins, M.D., Walla Walla Valley Medical Society, 330 Drumheller

(Testimony of Morton W. Tompkins.)

Building, Box 1038, Walla Walla, Washington:

“Dear Doctor Tompkins:

“Your letter of July 25 to Dr. Lull, in further reference to the Robinson appeal, was considered by the Judicial Council at a meeting held in Chicago, October 17, 1952.

“In your letter you suggest that the Council revise its opinion of June 9, 1952, in the Robinson appeal case which in effect affirmed the previous opinion [1825] of the Council sustaining the appeal. You submitted with your letter a draft of a suggested revision of the June opinion.

“After due consideration of your letter, it was the opinion of the Council that further action by it in this appeal would not be warranted. The Council gave careful consideration to the issues presented by the appeal, both when the appeal was originally heard and again when the rehearing was held last June in Chicago. It does not now believe the case can be reopened even to the extent suggested in your letter.

“Sincerely yours,

“EDWARD R. CUNNIFFE M.D.,

“Chairman, Judicial Council.”

You don't have any recollection of receiving that letter? Is your address 330 Drumheller Building?

A. No.

Q. What is your address?

A. 120 East Birch.

(Testimony of Morton W. Tompkins.)

Q. And this is addressed to 330 Drumheller Building, Box 1038. What would that address be, if you know?

A. Probably the Medical Service Bureau [1826] office.

Q. And you never saw this letter?

A. Not to my memory. Not in that form, not signed by Dr. Cunniffe.

Mr. Sembower: Your Honor, I have here a deposition taken in this case of George F. Lull in Chicago, July 14, 1955, and I refer to page 124, which gives the minutes of the Judicial Council meeting of October 17, 1952. It is not long and I would like to read it, if I may, into the record.

The Court: All right.

Mr. Sembower (Reading):

“Q. Dr. Lull, do you have in your possession any other minutes pertaining to Dr. Miles H. Robinson?”

“A. Yes. I have the minutes of the meeting of October 17, 1952, at which time were present: The Chairman, Dr. Cunniffe; Dr. Walter F. Donaldson, Dr. J. B. Lukins; Dr. Howard, the assistant Secretary of the Association, was present; Mr. Holloway and Mr. Hall.”

The Court: What page are you reading from, Mr. Sembower?

Mr. Sembower: 124. It is the large one.

The Court: Oh, it isn't this deposition [1827] here?

Mr. Sembower: No, that is the written interrogatories.

(Testimony of Morton W. Tompkins.)

The Court: Oh, I see; all right.

Mr. Sembower (Reading continued):

“That part concerning Dr. Robinson starts on page 2 and continues on page 3 where marked.

“Q. The part you have marked reads as follows:

“‘A communication from Walla Walla Valley, Washington, Medical Society protesting decision of the Judicial Council in appeal of Dr. Miles H. Robinson.

“‘A letter from Dr. Morton W. Tompkins of the Walla Walla Valley Medical Society making certain demands on the Judicial Council in connection with its decision in the appeal of Dr. Miles H. Robinson was presented. The Chairman said he did not see what more the Council could do; that for the first time in its history the Judicial Council had held a rehearing of an appeal, and the demand of [1828] the Walla Walla Valley Medical Society could not be entertained by the Council.

“‘Mr. Holloway thought the letter ought to be acknowledged, and the Chairman asked him to write an answer for the Chairman’s signature, a copy of which the Chairman would send to each Council member, and would let Mr. Holloway know whether or not the answer was approved.’

“The end of it doesn’t appear to be marked.

“A. That is the end of it right there.”

And that is all that relates to this matter.

Q. Dr. Tompkins, how long have you practiced in Walla Walla? A. Since 1940.

(Testimony of Morton W. Tompkins.)

Q. Are you thoroughly familiar with the medical practice here?

A. I don't know what you mean.

Q. Well, you are conversant with the mechanics of conducting a practice here in Walla Walla, are you not?

A. I think so.

Q. If you were expelled by the society and lost your hospital privileges and one of the hospitals refused to take you back, would you be able to practice effectively [1829] in Walla Walla?

Mr. Kimball: If the Court please, I believe that might go to the question of damages, which I understand the Court has ruled in abeyance.

The Court: Yes, that would be a question of damages, wouldn't it?

Mr. Sembower: All right.

Q. Dr. Tompkins, are you an officer of the staffs at either of the local hospitals here?

A. No.

Q. Do you participate in the staff organization of one of the hospitals?

A. I am a member of both.

Q. What is the function of the staff of the hospital so far as admissions of doctors to bring patients into the hospital is concerned?

A. Judge qualifications of physicians to bring patients in?

Q. Yes.

A. Is that the question you are asking?

Q. That is the question.

Mr. Smith: Your Honor, I think the bylaws, as far as St. Mary's Hospital is concerned, speak for

(Testimony of Morton W. Tompkins.)

themselves on that. I don't think the record should have the witness' opinion regarding them. [1830]

The Court: Well, if I get it, I think counsel's purpose is to interrogate as to what part the staff takes in the admission.

Mr. Sembower: That is correct. I know that the bylaws——

The Court: The bylaws speak for themselves. You may proceed.

Mr. Sembower: Thank you.

A. The requirements for staff membership are set up in the constitution and bylaws of each hospital. The staff itself has a credentials committee. They process the application of the applicant, certify that the statements made in the application are true, and after that has been done, pass the certified application to the board of directors of the hospital staff. I am not sure whether it is called the board of trustees or the board of directors, but I think it is called trustees.

Mr. Smith: Your Honor, may I interrupt to inquire which hospital the witness is speaking about?

Mr. Sembower: Be glad to have him clarify it.

Q. Which hospital are you speaking of?

A. Generally they are the same. There are very minor details.

Q. You are on the staffs of both and this description relates both to St. Mary's and the Walla Walla General [1831] Hospital?

A. Yes, yes. I think I will specify some differences as I proceed.

(Testimony of Morton W. Tompkins.)

After the board of trustees of the staff has received the certified application, they pass on their recommendations to the staff itself as to whether it will be accepted or rejected. The staff then votes on those that have been recommended for—well, they vote on all, whether they are recommended for acceptance or rejection. The staff then votes and after an affirmative vote, the applicant is a member of the staff, provided he is also acceptable to the administration of the hospital.

In this particular point, there is a difference in the two hospitals in Walla Walla. At St. Mary's Hospital, the administrator of the hospital is the final authority and she can on her own authority neutralize any staff recommendation. At the General Hospital, it is a hospital board. I do not think that the manager of the General Hospital can neutralize a recommendation of the staff, but the hospital board can.

Q. Now, are you a member of the credentials committee of either of these hospitals? A. No.

Q. Were you a member of the credentials committee at the [1832] time when Dr. Robinson's expulsion occurred? A. No.

Q. Were you a member of either or both of the credentials committees at the time that the Judicial Council made its finding in his favor, which would be around February 1st?

A. I have never been a member.

Q. Never been a member of those?

A. Of the credentials committee of either hospital.

(Testimony of Morton W. Tompkins.)

Q. Did you participate in any conferences or discussions of the staff at either of the hospitals involving Dr. Robinson related to this controversy?

A. No. I don't believe there were any.

Q. Well, you did know that if he were expelled from the society, that he would lose his hospital privileges, didn't you?

A. That is up to the hospital administration.

Q. And also the staff, is it not?

A. No, that is an administrative problem.

Q. That is——

A. That is not a staff problem.

Q. That is, it is exclusively an administrator's responsibility to determine what doctor is admitted—may admit patients to the hospital?

A. Yes. [1833]

Q. Well, what function does the staff have in that connection, any?

A. To pass on qualifications, but the hospital administrator, if we may take St. Mary's as an example, because there is a difference between the administrator of St. Mary's and the board of General, the two will have comparable power and authority, so when we say administrator, let us talk about St. Mary's specifically.

The administrator of St. Mary's Hospital can admit or deny admittance to any doctor she so pleases and there is no one who has any recourse to her action whatsoever.

Q. Now, however, must that doctor be on the eligible list approved by the staff? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And that is a function in addition to the by-law provision, that he must be eligible for membership in the society?

A. I don't understand your question.

Q. Well, I mean could a person who was eligible for membership in the society, but who was opposed by the members of the staff, be approved by the administrator of St. Mary's and then be permitted to take patients there? A. Yes.

Q. That could happen? [1834] A. Yes.

Q. That is, that staff cannot vote on that?

A. No.

Q. It is, in other words, entirely a matter, then, of the eligibility for society membership that determine the general group of doctors that may be admitted?

A. On the other hand, it *would* a foolish move on the part of the administrator to admit a doctor whom the staff has said does not have the qualifications or should not practice in this hospital.

Q. Why would it be foolish?

A. A matter of public relations with the people who keep her hospital occupied.

Q. Well, now, how do you mean public relations?

A. Just exactly that.

Q. Well, I mean detail them. I mean, who would be offended by that or what public alienated?

A. The doctors——

Mr. Smith: Your Honor, I think these questions are speculative. Dr. Tompkins is speculating as to

(Testimony of Morton W. Tompkins.)

the motives of the St. Mary's Hospital. I will object to the question.

Mr. Sembower: Your Honor, I don't think what the witness says here, other than what he says as to matters of fact, would be binding upon the hospital, but it does give us testimony as to the functioning of the doctors and the [1835] ones that he knows of.

The Court: I don't think it would be binding on the hospital.

Mr. Sembower: I don't see how.

The Court: All right, go ahead.

Q. (By Mr. Sembower): I wanted to know what was involved in the public relations, Dr. Tompkins?

A. A hospital is a rather complex unit. It cannot exist successfully unless the administration and the doctors who work there work for a common purpose and that common purpose should be the proper care of the patient. The rights of each in the functioning of the hospital should be respected by the other.

Q. You mean the administration and the staff?

A. Correct. The staff——

Q. For the good of the patient?

A. The staff will determine the type of care that the patient has.

The Court: This seems to be going pretty far afield.

Mr. Sembower: Very far afield.

The Court: In view of the time limit that is involved here.

Mr. Sembower: Yes, I'm sorry about that.

(Testimony of Morton W. Tompkins.)

The Court: We could go on with this for days.

Q. (By Mr. Sembower): What I wanted to get at, however, [1836] Dr. Tompkins, was you said it would be foolish for the administrator of the hospital to accept the patients of a doctor who was not acceptable to the staff. Now, what I want to know is, just cogently and clearly, what would be the consequences of that?

The Court: You would incur the ill will of the other doctors on the staff who bring patients to the hospital, isn't that what you had in mind?

A. That is the only thing.

The Court: All right, go ahead. We have got that settled, something else now.

Mr. Sembower: Well, I think——

A. May it please your Honor——

The Court: Well, I will recess and maybe you can think up something else in the meantime.

(Whereupon, a short recess was taken.)

Mr. Sembower: I think, your Honor, I have just a few questions, just three or four.

Q. Dr. Tompkins, do you know of any doctor whose patients have been admitted to the hospital who has not been accepted by the staff at the particular hospital? Either Walla Walla General or St. Mary's?

A. I believe that there have been a few patients admitted to either or both of the hospitals by doctors who live out of the community who bring an occasional case in on [1837] a courtesy basis prior

(Testimony of Morton W. Tompkins.)

to the time that they have applied to the staff as a courtesy member.

The Court: That wasn't what you had in mind, was it, Mr. Sembower?

Mr. Sembower: That is not what I had in mind.

The Court: You meant whether any local doctors?

Mr. Sembower: I meant local doctors.

Q. Do you know of any local doctors in the community who are not in that special classification, Doctor?

A. No, I don't.

Q. Dr. Tompkins, did you ever see any indication that any Dr. Robinson was going to commit physical violence on you, any specific indication?

A. One specific time, I believe that if the table had not been present, I would have been subjected to that.

Q. And where was that?

A. That was at the Los Angeles hearing of the Judicial Council.

Q. That was what you mentioned yesterday, is that correct?

A. Yes.

Q. Do you know of any other specific instance where the indications were that he would commit any physical violence on any doctor in this city in the society, know of your own knowledge?

A. No. [1838]

Q. Dr. Tompkins, you don't know of any specific information that Dr. Robinson was ever in a mental institution, do you?

A. No.

Q. None whatever?

A. No.

(Testimony of Morton W. Tompkins.)

Q. To your knowledge, was he ever in a mental institution? A. No.

Mr. Sembower: That is all, your Honor.

Cross-Examination

By Mr. Kimball:

Q. Just a few questions, Dr. Tompkins. Late in your direct examination you were asked if you had received a certain letter from Cunniffe and you said no. Do you know what I am speaking of?

A. Yes.

Q. I show you what has been marked Defendants' Identification 441 and ask you if you have seen that before? A. Yes.

Q. May I have it, please?

Mr. Kimball: May it be admitted?

Mr. Sembower: No objection.

The Court: It may be admitted, then, Defendants' Exhibit 441. [1839]

(Whereupon, the said letter was admitted in evidence as Defendants' Exhibit No. 441.)

Q. (By Mr. Kimball): Please read it, including the date.

A. On the stationery of the American Medical Association, August 25, 1952:

“Dr. Morton W. Tompkins,
“Walla Walla Valley Medical Society,
“Walla Walla, Washington.

“Dear Doctor Tompkins:

“Your letter of July 25 informing me of the re-

(Testimony of Morton W. Tompkins.)

instatement of Doctor Robinson to the Walla Walla Valley Medical Society has been received. The delay in answering this was due to the fact that it was referred to our Bureau of Medicine and Legislation and the Director was ill at the time. I am sorry I have no authority to commission Mr. Hall or anyone else to write an additional opinion in the Robinson case for the Judicial Council. I can present your suggestion to the Judicial Council at its next meeting, however, and I shall do that unless I hear from you to the contrary.

“Very truly yours,

“GEORGE F. LULL.” [1840]

Q. The date of this letter is after Dr. Robinson was reinstated, is that correct? A. Yes.

Q. Dr. Tompkins, you were asked concerning the various proceedings held by the society and the trustees in connection with the Brooks vs. Robinson matter. Was there a trustees' meeting on the 13th of December, 1950? A. Yes.

Q. You can refresh your recollection from the minutes, if you wish, but I am referring to the meeting where the matter was referred to the state grievance committee. A. Yes.

Q. Can you give us any explanation why that corporate action was taken at that time?

A. We had received the transcript of the hearing held before the board of trustees on November 21st. At that particular time, we were doing everything possible within our power to be as fair and exact

(Testimony of Morton W. Tompkins.)

in our observance of all the procedural methods, both local and state, that we knew about. We had heard of the formation of the state grievance committee. We knew that the state organization superseded our own and, in addition, we wished to offer Dr. Robinson another hearing, if you wish to call it that, before outsiders, and for that reason, or those reasons, we referred the matter to the [1841] state grievance committee.

Q. Dr. Tompkins, did the board of trustees have a trustees meeting on the 15th day of May, 1951, as shown by the minutes? A. Yes.

Q. Was the matter of Brooks vs. Robinson considered by your trustees at that meeting?

A. Yes.

The Court: What was that date again?

Mr. Kimball: May 15, 1951.

The Court: 1951?

Mr. Kimball: Yes, your Honor.

The Court: All right.

Q. (By Mr. Kimball): Did your board of trustees at that meeting consider all the evidence that they then had pertaining to this matter?

A. Yes.

Q. Among the things they considered, did they consider the evidence they heard at the November 21st meeting of 1950?

A. It was available, parts of it were read.

Q. Parts of the transcript were read?

A. Yes.

Q. Speaking of that transcript of the November

(Testimony of Morton W. Tompkins.)

21st meeting, 1950, did it substantially record the statements [1842] that were made by the witnesses and the parties at that hearing? A. Yes.

Q. Did you also at the meeting of 5-15-51 consider the state grievance committee opinion?

A. Yes.

Q. You had received that a short time previous?

A. Yes.

Q. How long before, if you recall?

A. I believe within a week.

Q. After that trustees meeting of May the 15th, 1951, was a summary or comprehensive summary drawn up of the trustees' actions in this matter for presentation to the society as a whole?

A. Yes.

Q. Who drew that up? A. I did.

Q. Did you actually draw it up physically? I mean, was there a writing drawn up? A. Yes.

Q. Where is that? A. In my pocket.

Q. Would you refresh your recollection from it?

A. Yes.

Q. Does it contain the same material that was read before [1843] the society as a whole at the expulsion meeting of May the 22nd, 1950, a week later? A. Yes.

Q. Was that read by you or Dr. Carlson at that meeting, or both of you?

A. I believe this part was read by me.

Q. And did it find its way into the minutes of the meeting of the 22nd of May, 1951?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Did that summary as prepared by you comprise a true and accurate summary of the actions and findings of the trustees pertaining to this matter? A. I felt that it did.

Q. At the society meeting of May the 22nd, 1951, you testified yesterday concerning some of the things that happened and I believe you said that Dr. Robinson presented some matters in his own defense, is that correct? A. Yes.

Q. Why don't those remarks appear in your minutes of the meeting of May the 22nd, 1951?

A. They were requested and refused.

Q. Requested by whom to whom?

A. Either I wrote a letter or a letter with my authority by Mr. Fullerton was written to Dr. Robinson specifically requesting—— [1844]

Q. Just a moment, that is enough. I show you what has been marked Plaintiff's Identification 126 and ask you if you recognize that? A. Yes.

Mr. Kimball: Any objection?

Mr. Sembower: No objection.

Mr. Kimball: We would like to offer this.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 126.)

Q. (By Mr. Kimball): Will you kindly read this to the Court?

A. Letterhead Walla Walla Valley Medical Society, June 19, 1951:

(Testimony of Morton W. Tompkins.)

“Miles H. Robinson, M.D.,
“Drumheller Building,
“Walla Walla, Washington.

“Dear Mr. Robinson:

“I have been instructed to advise that the Minutes of the Meeting of May 22, 1951, have been prepared and as soon as approved a copy will be furnished for your personal use. However, President Tompkins stated that at this meeting you read certain defense remarks from a prepared manuscript, [1845] that it is his opinion the minutes would be more fully complete if those remarks were incorporated therein, and requested that I ascertain whether or not the manuscript is obtainable for the above purpose. Your early reply to President Tompkins' inquiry will be greatly appreciated.

“Very truly yours,

“C. E. FULLERTON,

“Executive Secretary.”

Q. Did you instruct your secretary to write that letter? A. I did.

Q. To your knowledge, did any reply come in reply to this letter?

A. To my knowledge, there was no reply.

Q. Were you ever furnished a copy of the remarks that Dr. Robinson made at that meeting?

A. No.

Q. In connection with and a short time before the meeting of May 22, 1951, Dr. Tompkins, did you seek the advice of legal counsel on procedures that you should follow? A. I did.

(Testimony of Morton W. Tompkins.)

The Court: When was this date?

Mr. Kimball: A short time before May 22, 1951.

The Court: I see. [1846]

Q. (By Mr. Kimball): I show you Plaintiff's Exhibits 109 and 110. Do you recognize those?

A. Yes.

Q. They do not purport to be true copies because they don't show a letterhead, do they?

A. That is right.

Q. I show you a document, three pages, containing substantially the same material and ask you if you recognize what I show you?

A. Without reading carefully word for word, I believe they are substantially the same.

Q. And you notice, however, there is no letterhead on the exhibit? A. Yes.

Mr. Kimball: I would like to have this marked identification next in order for the defendant.

The Court: Yes. Let's see, that is a copy with the letterhead added. What number?

Mr. Kimball: Yes, 109 and 110. The copy that is an exhibit is apparently a retyped copy from Dr. Robinson's offer. I am offering the original that was furnished.

The Court: All right. The thing I had in mind if we could make A numbers.

Mr. Kimball: I think that is a good suggestion. They might be marked 109-A and 109-B to correspond with the [1847] exhibit. [1848]

(Testimony of Morton W. Tompkins.)

The Court: Pardon me, have those been marked 109-A and 110-A?

A. 110-A.

The Clerk: 110-A.

The Court: All right. Yes, those have been admitted.

Q. (By Mr. Kimball): Dr. Tompkins, did you attempt to comply with the advice you received by these letters in your meeting of May the 22nd, 1951?

A. I did.

Mr. Kimball: No further questions.

The Court: Any redirect?

Mr. Sembower: Just one or two questions here on the matters that have just come up.

Redirect Examination

By Mr. Sembower:

Q. Dr. Tompkins, you referred to the December 13th meeting of the board of trustees of the Walla Walla Valley Medical Society. Was this a regular meeting of the board of trustees? [1854]

A. What do you call a regular meeting?

Q. I ask you that. It isn't denominated a special meeting, but it doesn't seem to fall within the normal sequence between those meetings. Was it called specially, as a matter of fact?

A. I believe it was.

Q. And it therefore should be noted as a special meeting?

A. The board of trustees has never had a specific time at which it will have its meetings.

(Testimony of Morton W. Tompkins.)

Q. Oh, I see.

A. Whenever there is a sufficient amount of business, a meeting is called.

Q. I notice there were four members present, Dr. Page, Tompkins, Lange and Ralston. Does that constitute a quorum of your board of trustees?

A. Three is a quorum.

Q. Thank you. I find in the minutes:

“The charges made in the letter of Dr. Miles H. Robinson to the Board of Trustees of the Walla Walla Valley Medical Society dated November 7, 1950, were carefully considered in detail, and it was the unanimous opinion of the Board that the charges were without merit.”

Then there also is the resolution which was [1855] adopted saying that the complaint made by Thomas R. Brooks justified reference to the board of trustees, reference to the grievance committee of the Washington State Medical Association.

Now, was that the first time that the trustees had considered these matters?

A. Would you please state the dates again?

Q. Well, I will just ask you simply first about the Brooks complaint, was that the first time that the board had considered that matter?

A. No, we—which matter?

Q. The Brooks matter, first?

A. The Brooks matter. We had had a hearing on this.

Q. But was this the first time that the board

(Testimony of Morton W. Tompkins.)

had considered it in its executive session or special session as to the decision to be taken?

A. I don't understand what you are getting at.

Q. You had a hearing?

A. We had a hearing.

Q. Was this the first time you had decided what you would do?

A. Yes, this is the first action after we had our hearing.

Q. All right, and that also corresponds to the latter one, does it?

A. This is the first meeting that we had had following— [1856] this is the first official action that we took on the charges of Dr. Robinson and this is the first meeting of the board of trustees, I believe, that was held after the special meeting that Dr. Robinson called.

Q. All right, now, with reference to the May 22nd meeting, or rather with reference to the letter which has just been introduced in evidence, 109-A, written by Judd Kimball to Dr. Morton Tompkins, was this written at your request?

A. I asked Mr. Kimball for advice.

Q. Did you feel you needed legal advice at this time? A. On procedure, yes.

Q. Now, I just wonder about the sequence of dates here. I notice that the date here is May the 18th, but I find that in the minutes of your board of trustees dated May 15th, three days previously, the entry:

“Dr. Beaver moved, seconded by Dr. Carlson, that

(Testimony of Morton W. Tompkins.)

the Board of Trustees, in accordance with the findings of the State Grievance Committee, finds Dr. Miles H. Robinson guilty of violating principles of Chapter II, Section 2, of the current Code of Medical Ethics of the American Medical Association.”

Why did you not feel you needed legal [1857] advice before the finding of guilty? A. I did.

Q. And did you obtain it?

A. The request was made several days before Mr. Kimball actually wrote the letter.

Q. Oh, I see. He didn't get the letter to you before the 15th, then?

A. No, but he told me these things in his office and the letter was confirmatory and explanatory.

Q. Now, with reference to the matter of Dr. Robinson's statements at that May 22nd meeting, did he not in fact tell you that he was speaking from notes? A. Pardon?

Q. You stated that you asked Dr. Robinson for a copy of his remarks given at the May 22, '51, meeting? A. Yes.

Q. Did he not in fact tell you that he was speaking from notes?

A. Well, he had a prepared manuscript from which he read partially and then went on and talked after that.

Q. Well, do you know of your own knowledge that he was not speaking from notes?

A. I was presiding at the meeting. Dr. Robinson read the statements from several sheets of paper at

(Testimony of Morton W. Tompkins.)

the first part of his statement. He was not speaking from notes at [1858] that time.

Q. It is your testimony he was not speaking from notes? A. From what he read.

Q. Let me ask you, I do not find in the minutes of that meeting statements of any others who spoke. Why are there no entries for them?

A. No one else spoke until the discussion.

Q. You mean Dr. Robinson was excused for an hour, did no one else speak then?

A. No one did any talking or discussing until the matter of what the sentence should be.

Q. How did you spend that hour?

A. It was not an hour, perhaps 40 minutes, but not an hour.

Q. Well, how did you spend 40 minutes, then, if no one spoke?

A. After Dr. Robinson was excused from the meeting, I declared the meeting, the body, a jury. I then went through the testimony that had been read and pointed out that there had been a discrepancy in the statements of Mr. Noel Edwards at the various meetings. I pointed those out very specifically. I then wrote the specific things on the blackboard on which they were to vote. The first point was—it was labeled——

Q. Well, now I don't want to unduly prolong this. A. You asked what we did. [1859]

Q. Well, I want to give you the opportunity to answer, but if your answer is there was no state-

(Testimony of Morton W. Tompkins.)

ment made, the time was spent in this kind of activity that you are describing, is that correct?

Mr. Kimball: If the Court please, I think the witness should be allowed to finish his answer.

Mr. Sembower: It is only a matter of time, I am perfectly willing for him to.

The Court: Well, I think he may state generally what was done. The activity was such as you have described?

A. Correct.

The Court: All right, I think that is sufficient.

A. After the vote was taken on the two propositions, they were by written ballot, we waited until the ballots were counted and I announced the decision. I then instructed them regarding the bylaws as to what their future action had to be, since the vote was guilty. And at this time a motion was made for suspension. Then is where the discussion occurred.

Q. (By Mr. Sembower): Was there any pro and con discussion during this 40-minute period?

A. Yes.

Q. On the matter. Well, now, why are there no minutes about that?

A. Dr. Carlson was acting as secretary; I don't know. [1860]

Q. Were there any statements made before Dr. Robinson left the meeting?

A. I don't recall any, I do not believe there were.

Q. There are no minutes about that. Now, about

(Testimony of Morton W. Tompkins.)

Mr. Noel Edwards, who arranged for Mr. Noel Edwards to be there at the meeting?

A. I asked Mr. Fullerton to have him there.

Q. And he did make the arrangements for him to come? A. Yes.

Q. Did you, Dr. Tompkins, prior to this meeting of May the 22nd ever speak to Dr. Robinson directly and tell him that a vote on the expulsion was going to take place? A. No.

Mr. Sembower: That is all. Oh, just a second.

Q. Did Dr. Pratt make any statements at this meeting, if you recall? A. I don't know.

Q. Did Dr. Page? A. Yes.

Q. But there is nothing in the minutes about that?

A. I think the minutes indicate that Dr. Page made a motion to amend. A motion had been made to suspend. Dr. Page made a motion to amend that to read expulsion, and the minutes so show.

Q. In those remarks of Dr. Page, did he state that he [1861] thought that the vote should be unanimous, if you recall?

A. I don't recall that.

Q. Do you remember any members of the society walking out of the meeting during this time, leaving the meeting during this period?

A. During this particular period, no.

Q. Yes, and before the vote?

A. Before the vote, there were some of the older men who take what we call our prostatic vacation. But they all returned.

(Testimony of Morton W. Tompkins.)

Q. Oh, they did. You don't know of any, then, that left the meeting?

A. Not to leave permanently.

Mr. Sembower: That is all.

Recross Examination

By Mr. Kimball:

Q. Two questions, Doctor. Was this meeting of May the 22nd, 1951, well attended?

Mr. Sembower: Well, now, "well" is a rather indefinite word.

Q. (By Mr. Kimball): Do you know how many were there, Dr. Tompkins?

A. I think approximately 31 or 32.

Q. Doctor, do you remember what the vote was on the matters [1862] on which you voted?

A. On the first vote, which was that of guilty regarding a threat, the vote was 26 to 4. The vote on whether privileged information had actually been divulged, I believe, was 25 to 5. There was one vote difference in the two. On expulsion, I believe the vote was 26 to 4.

Mr. Kimball: That is all, thank you.

The Court: Any other questions?

Mr. Sembower: Just one more question.

Redirect Examination

By Mr. Sembower:

Q. Dr. Tompkins, were any witnesses presented other than Noel Edwards? A. No.

(Testimony of Morton W. Tompkins.)

Q. Do you recall anyone at the meeting making the statement, with reference to the state grievance committee findings, "The eyes of the State are on us"? Do you remember that statement being made?

A. Not at that meeting.

Q. Do you remember it being made at some meeting?

A. I believe that that statement probably was made at a meeting at the time the grievance committee problem was being discussed.

Mr. Sembower: All right. That is all. [1863]

The Court: Any other questions?

Mr. Kimball: No.

The Court: That is all, then, Doctor.

(Witness excused.)

Mr. McNichols: Mr. Sherwood. We can finish with Mr. Sherwood before noon, your Honor.

The Court: I refuse to be optimistic about the time element. I thought we were almost through with Dr. Tompkins when we adjourned last evening.

CAMERON SHERWOOD

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Will you state your name, please, Mr. Sherwood? A. Cameron Sherwood.

Q. And your address?

(Testimony of Cameron Sherwood.)

A. 216 Stanton Street, Walla Walla.

Q. And you are an attorney at law?

A. I am.

Q. And where is your office, Mr. Sherwood?

A. Baker Building.

Q. Do you know the plaintiff, Dr. Miles Robinson?
A. I do. Not intimately. [1864]

Q. Do you recall when you first met him, approximately?

A. I believe that I met him shortly before May 10, 1951.

Q. With respect to these matters, have you refreshed your recollection recently?

A. I have a file, very few papers in it, from which I refreshed my recollection.

Q. Did Dr. Robinson come to see you in your office?
A. He did.

Q. And what was his query to you at that time?

A. He had been referred to me by Dr. Mount, a client of mine, and he complained of some disciplinary proceeding that was about to take place in the medical society and asked me to represent him at the meeting. After hearing his complaints, I stated that I thought that it was of a petty nature and that he ought to go and represent himself at this meeting; that it would be a mistake if a lawyer appeared for him because that would only magnify the matter.

Q. Did he tell you approximately when that meeting was coming up?

(Testimony of Cameron Sherwood.)

A. I assume he did because I knew that there was an imminent meeting planned.

Q. If there was testimony here to the effect that there was a meeting held on the 22nd of May, 1951, does that refresh your recollection? [1865]

A. Yes, I have ascertained from my file that that was the date.

Q. And then when did you next see Dr. Robinson? A. I saw him shortly after May 22nd.

Q. Did he come to see you again?

A. He called me on the telephone and also came to see me.

Q. And did he show you any documents when he came to see you?

A. He, I believe, did. He showed me a mimeographed statement that he had prepared, I believe condemning the medical society for its action on the 22nd.

Q. Well, subsequently, Mr. Sherwood, did you talk to any members of the society about this situation? A. I did.

Mr. Kimball: Subsequent? When?

Mr. McNichols: Subsequent to this expulsion meeting.

Q. To whom did you talk?

A. I advised Dr. Robinson that I did not desire to appear as a lawyer, but that I had good friends among the medical men here, including my personal surgeon, and physicians, Drs. Lyman, Falkner and Lange; that I would try to intercede for him in this matter, resting on this complaint of the patient

(Testimony of Cameron Sherwood.)

largely, and I went down to see Dr. John Lyman, who is in the same building with me, [1866] about the 23rd or 24th, I believe, of May.

Q. Did you have a conversation with Dr. Lyman?

A. I had a brief conversation with Dr. Lyman, who referred me to Dr. George Falkner, his associate.

Q. Did you then go to see Dr. Falkner?

A. I did.

Q. Did you have a conversation with him?

A. I had a lengthy conversation with Dr. George Falkner.

Q. Was anyone else present during that conversation? A. During a part of that time.

Q. And who was that? A. Dr. Lange.

Q. Would you relate the conversation that took place between yourself and Dr. Lange, if any?

Mr. Kimball: If the Court please, I have no objection to this except it should only be the part of the conversation when Dr. Lange was present.

Mr. McNichols: I attempted to restrict it.

The Court: I understood that there was that restriction, also.

A. It is rather difficult for me to recall what portions of the conversation took place before and after Dr. Lange came into Dr. Falkner's office. I will endeavor to exclude from my testimony that which took place preliminarily with Dr. [1867] Falkner.

Q. (By Mr. McNichols): Do you understand that Lange is a defendant and Dr. Falkner is not?

(Testimony of Cameron Sherwood.)

A. I don't have any understanding of who the defendants are. I haven't inquired.

Q. Well, for your information——

A. Except subsequently I have read in the paper.

The Court: The situation is, Mr. Sherwood, that Dr. Falkner is not a defendant here, but Dr. Lange is, so that that is the reason we wish to restrict it to the part where Dr. Lange was present.

A. I will be very scrupulous about that.

Q. (By Mr. McNichols): What was the subject of your conversation in Dr. Lange's presence?

A. When Dr. Lange came in, as I recall, I advised him as to my presence there, the purpose of my presence there, not as a lawyer but as one interceding at the suggestion of Dr. Mount, who is a client and friend.

He said, "Well, you certainly don't want to take that man's case." And I said, "Why," and he said, "Well, he is emotionally disturbed," and Dr. Pratt had stated that he had paranoidal tendencies.

Mr. Kimball: I didn't know that Dr. Pratt was present.

The Court: I understand his testimony that Dr. Lange said that Dr. Pratt had said that. [1868]

A. Yes. Dr. Pratt had some controversy with Dr. Robinson before that and had stated to Dr. Lange that he thought he had paranoidal tendencies.

Q. (By Mr. McNichols): Now, approximately

(Testimony of Cameron Sherwood.)

when did this conversation take place, Mr. Sherwood?

A. I would say it was about the 23rd or 24th of May.

Q. And how do you fix that date?

A. Well, it was very shortly after his expulsion and by a letter in my file in which I wrote to Dr. Robinson stating that I hoped that they would expunge the thing from the record about this syphilitic patient.

Q. Well, then, proceed with your conversation with Dr. Lange.

A. I said, "The man appears to me a very brilliant man." He said, "He is brilliant," and he said that the society members were resentful because he had resigned from this medical service bureau that was set up to function with the society in some fashion and that he had denounced the medical service bureau rather actively and had corresponded with men all over the state, the medical society people, and he was rebellious about this medical service bureau.

Q. Did he mention anything about the grievance committee of the society?

A. He didn't mention anything about the grievance committee, [1869] as I recall.

Q. And what did you say to him then?

A. I advised him that I thought this complaint of the patient was something that should have been handled more delicately; that I thought if they would call him before a group of his brethren in

(Testimony of Cameron Sherwood.)

the profession; and I think I alluded to a similar situation in the bar association where we had had a complaint against a member of the bar and we had handled it in a little more diplomatic way.

Q. Well, then, subsequently, Mr. Sherwood, did you learn that Dr. Robinson had received notice of reinstatement in the AMA?

A. I, by coincidence, was operated on by Drs. Lange and Falkner on the 29th of May, a few days after this conversation. I had a sudden gall bladder attack.

Q. By Dr. Lange and Dr. Falkner?

A. Dr. Falkner and Dr. Lyman.

Q. Oh.

A. And so I was on the shelf until about September and I didn't know what went on after that. However, the next contact I had with Dr. Robinson, if I recall, was when he presented to me a day or so after he had received the telegram from the AMA reinstating him, and I wrote him a letter of congratulation. [1870]

Q. And what did you do after that?

A. He called on me and asked me if I could force the society to give him back his hospital privileges. I called Dr. Ralph Keyes, who I believe was an officer, and Dr. Keyes referred me to Mr. Fullerton of the medical service bureau.

Q. What did Dr. Keyes say?

A. To find out about when a meeting was going to be held to consider this telegram, as I recall.

Q. Did Dr. Keyes mention that to you?

A. Dr. Keyes stated that he had nothing signed

(Testimony of Cameron Sherwood.)

and that they were waiting for written confirmation of the telegram.

Q. And then what did you do?

A. I called Fullerton and Fullerton, I believe, told me the date that they were going to have a meeting, at which time they hoped to have written confirmation of the signature on the telegram.

Q. Were you acquainted with Mr. Fullerton?

A. I was acquainted with Mr. Fullerton. I talked to him, I think, several times incidentally about this matter.

Q. Mr. Sherwood, do you know Miss Mildred Curts? A. I do.

Q. And when did you first know her?

A. She was a court reporter when I first came to Walla [1871] Walla in the Superior Court of this county. I think I knew her when I was a young newspaper reporter here in the 20's.

Q. Have you conducted cases in which she has been the reporter in the Superior Court?

A. I have; many cases.

Q. Did you have occasion in those cases to have her prepare a record? A. I have.

Q. Of proceedings for you. And are you familiar with those records that she has prepared?

A. Yes.

Q. Did those records truly reflect all the proceedings that transpired in the court when she was taking the testimony?

Mr. Kimball: If the Court please, I object to

(Testimony of Cameron Sherwood.)

that question as not being material to any issue in this case.

Mr. McNichols: I will rephrase the question, your Honor.

Q. In the records which Miss Curts prepared, state whether or not there were errors in the transcript.

Mr. Kimball: I renew the objection, your Honor.

The Court: Are you trying to prove that Miss Curts is incompetent as a stenographer in order to corroborate your claim here that this was an inaccurate record in this [1872] particular case?

Mr. McNichols: Yes, your Honor.

The Court: Can you do that by specific instances of inaccuracies? I don't believe you can do that, can you, by showing that some record or——

Mr. McNichols: I will rephrase the question, your Honor, perhaps this way:

Q. Mr. Sherwood, do you know the reputation of Miss Curts in the community with respect to her ability as a shorthand reporter?

A. I would say——

The Court: Wait a minute.

Mr. Kimball: I am afraid that doesn't cure the objection that I am trying to make.

The Court: What is your objection, Mr. Kimball?

Mr. Kimball: That you cannot show that a particular transcript here involved is inaccurate by showing Miss Curts' reputation of what she did in some other instance over the past 20 years.

(Testimony of Cameron Sherwood.)

Mr. McNichols: Your Honor, the testimony here has been that Dr. Robinson complained. We are not making any effort whatsoever to involve Miss Curts in this thing, except it has become a vital issue as to her capabilities to report a procedure of this kind, and I think her reputation in this community among the lawyers bears upon that. [1873]

The Court: I think not. That is collateral. I would have to let them bring in a certain number of witnesses. How many should we have, six on a side, as to whether or not Miss Curts is a capable reporter. I think it is a collateral excursion. I will sustain the objection.

Mr. McNichols: We can do it in another manner and I will withdraw the question. No further questions.

Mr. Kimball: No questions.

(Witness excused.)

The Court: I think we may as well suspend now until 1:30. Court will recess until 1:30.

(Whereupon, the trial in the instant cause was recessed until 1:30 o'clock p.m., this [1874] date.)

* * *

NOEL B. EDWARDS

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Would you state your name, please, Mr. Edwards? A. Noel B. Edwards.

Q. And where do you reside?

A. 1254 Bell Street.

Q. In Walla Walla? A. In Walla Walla?

Q. What is your occupation, Mr. Edwards?

A. I am a salesman.

Q. For whom?

A. For Saxton Sewing Machine [1875] Company.

Q. You are a defendant in this action?

A. I am.

Q. You have been present in court during the proceedings off and on, have you?

A. Off and on. More off than on.

Q. You are the Noel Edwards to whom we have referred in the testimony?

A. That is correct.

Q. You are a son-in-law of Mr. Thomas Brooks?

A. That is correct.

Q. And you are the father of the child, Noeline Edwards? A. That's right.

Q. Now, Mr. Edwards, very briefly, referring you back to the first part of June of 1950, do you recall the day this incident occurred with respect to your child?

(Testimony of Noel B. Edwards.)

A. The actual day or date I cannot pin point.

Q. I think the date has been established as around the ninth of June, is that right?

A. Somewhere in that vicinity. I have a very poor memory.

Q. Were you home at that time?

A. No, I was not.

Q. Did you get home that evening?

A. Just what time I wouldn't know. It would probably be the latter part of the evening or late at night. I [1876] usually kept out pretty late at night.

Q. On that day, did your wife discuss with you the conversation she had had with Dr. Robinson?

A. She probably did, I just can't recall that off-hand.

Q. Referring you to Plaintiff's Exhibit No. 10, have you seen that before to your knowledge?

Mr. McNichols: This, your Honor, is the Edwards' complaint.

The Court: All right.

A. Yes, I am familiar with that now since these proceedings have started.

Q. Did your wife consult with you about filing this complaint?

A. I dare say she did. She never took anything in her own hands without first consulting with me. Just when it was, I just don't recall.

Q. Do you know when you first discussed it with her the possibility of making a complaint?

A. I, myself, don't recall when we first discussed

(Testimony of Noel B. Edwards.)

it what you consider a complaint. As far as we were concerned, it was just an inquiry.

Q. Oh, I see. Well, I was referring to it——

A. We didn't consider a complaint at any stage of the journey whatsoever.

Q. Did she tell you about the incident the same day that [1877] it occurred? A. Yes.

Q. And did she tell you substantially what appears in this document? A. Yes.

Q. You were familiar with it at all times on that factual basis?

A. Well, in my deposition that I gave just recently I got the cart before the horse. That happened around about five years ago, thereabouts, and I just get the cart before the horse. My memory wasn't too good, but I was familiar with the facts after having my memory jogged a little bit.

Q. Well, along that line, you say that you were familiar with these facts in the summer of 1950?

A. When that occurrence happened, yes, I was familiar with the facts, yes.

Q. Was it at your instigation that the complaint, whatever we call it, this notice was filed with the society?

A. Would you repeat that question?

Q. Was it at your instigation that this document or this complaint was made, if you want to refer to it as a complaint?

A. Well, I would say that after not getting the satisfaction from my wife seeing Dr. Robinson, I think it was by [1878] a mutual agreement.

(Testimony of Noel B. Edwards.)

Q. You concurred in it at that time?

A. Pardon?

Q. You concurred in the idea to make the complaint with your wife?

A. I daresay I did. I don't recall.

Q. Did you or she determine where she should go to make this complaint?

A. It was probably her, I couldn't tell you for sure.

Q. Do you know of your own knowledge to whether or not she talked to any official of the society or the bureau about it prior to going down there?

A. Well, to the best of my knowledge, she didn't. I wouldn't even know how she would know who to go to.

Q. Do you know one way or the other?

A. Well, since these proceedings have started, I would say no, she definitely didn't.

Q. Well, you mentioned in your testimony in your deposition Mr. Edwards, I will read a passage from your deposition which was taken in this case in January of 1956 and ask you if this is to what you had reference:

“Q. Isn't it possible that Dr. Robinson told your sister-in-law to gag the child, putting the finger down the throat so there would be [1879] regurgitation?

“A. Well, if he did, that was a totally different story to what was told me.

“Q. In any of the conversations, did anyone

(Testimony of Noel B. Edwards.)

recollect that he had told her that? A. No.”

Q. Is that to what you were referring?

A. As I stated previously, a short while ago, it was regards my deposition on that particular date and I think I mentioned in my deposition that I just got the cart before the horse there as regards what the Doctor did and did not say pertaining to the method of treatment to my youngster when she took this box of Ex-Lax.

The Court: You didn't hear this conversation over the phone? A. No, your Honor.

The Court: All you could know is what you heard someone else say?

A. What my wife told me and my sister-in-law told me.

Q. (By Mr. McNichols): But by January of 1956 when this deposition was taken, was that the first time that you had the story as it appears in the complaint?

A. No, I had had the story prior to that when the complaint was made and at probably one of the hearings, the first hearing probably, or somewhere along the line.

Q. Well, then, your answer, “Well, if he did, that was [1880] a totally different story to what was told to me,” is not your testimony now?

A. Well, I am going to have to take that back. Yes.

Q. There was one other portion of your deposition, reading from Page 15:

“Q. Well, as a matter of fact, didn't Dr. Robinson tell them to induce vomiting for the child?

(Testimony of Noel B. Edwards.)

“A. To the best of my knowledge, no.

“Q. Has anything ever been said about that?

“A. Well, we discussed it with my sister-in-law since this has come to a head the way it has and developed the way it has, that has been discussed, and between my wife, myself, my sister-in-law, and my sister-in-law is very emphatic at any time Dr. Robinson ever mentioned anything about vomiting, inducing vomiting.”

Q. Now, did you make that statement at that time, Mr. Edwards? A. I daresay I did.

Q. Do you also desire to change that answer at this time?

The Court: What is the purpose of this testimony, Mr. McNichols?

Mr. McNichols: Well, your Honor, Mr. Edwards appears [1881] all through this proceeding making statements and there are quite a number of contradictions in his own statements, and now perhaps to clear it up, it would clear it up if I could read briefly from the Plaintiff's Exhibit No. 104, which is the decision of the Washington State Grievance Committee—

The Court: Well, I suppose there would be no objection to your showing his making contradictory statements to show that the testimony he gave before the medical society was not correct.

Mr. McNichols: Yes, sir, and this particular one as I said from the document, agrees, “The testimony of Mr. Noel Edwards was definite that Doctor Robinson informed him that Mr. Brooks was suffer-

(Testimony of Noel B. Edwards.)

ing from syphilis. This testimony was not refuted and must therefore be accepted.”

This matter was preliminary——

The Court: Of course, you could interrogate regarding anything that he has testified as to what Dr. Robinson said to him, but this case has many peculiar angles, but I was just wondering about the propriety of cross-examining somebody on what he had said on a prior occasion somebody else told him. You are cross-examining him on whether his hearsay statements today are the same hearsay statements as at the time of the deposition.

Mr. McNichols: Well, then, it may be [1882] collateral. I will get to the point.

The Court: We don't want to go out into the woods any farther than we have to in this case.

Mr. Sembower: That's right.

Q. (By Mr. McNichols): Did you, Mr. Edwards, prior to the time the first complaint was made by Mr. Brooks to the trustees on the eleventh of October, 1950, did you tell your father-in-law, Mr. Brooks, that Dr. Robinson, in telling you this story, had specifically told you that Mr. Brooks was suffering from syphilis?

A. Dr. Robinson called me——

Q. Well, perhaps you can answer my question.

The Court: The question is a little difficult to comprehend. You better read it to him again.

Mr. McNichols: I will rephrase the question, your Honor.

(Testimony of Noel B. Edwards.)

Q. Between the week end of October the ninth—first of all, I believe you had a conversation with Dr. Robinson, on Friday? A. No.

Q. Friday, or Saturday?

A. It was a Saturday morning. Yes.

Q. Was that the 8th or 7th?

A. I couldn't tell you whether it was the 7th or 8th of October, around about there. Yes. [1883]

Q. Well, now, you again had a conversation with him some time. Was it Monday?

A. On a Monday morning, approximately 8:30 or 9:00.

Q. Well, now, between the time you had those conversations and the eleventh of October, did you tell your father-in-law that Dr. Robinson had told you specifically that your father-in-law had syphilis?

A. I believe it shows in the earlier testimony where I conceded to the fact that Dr. Robinson didn't use that word, "syphilis."

Q. Well, can you answer my question?

The Court: Just a moment now. What he is asking is not what Dr. Robinson said, but what you told your father-in-law that Dr. Robinson said. Is that clear? A. That is clear.

The Court: Isn't that your question?

Mr. McNichols: That is what I want.

A. To be quite frank with you, I can't recall it.

Q. (By Mr. McNichols): You don't know whether you did or not?

A. I just can't recall right offhand, no.

No. 15280

**United States
Court of Appeals**
for the Ninth Circuit

MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

Transcript of Record
In Four Volumes

Volume IV
(Pages 1267 to 1669)

FILE

APR 24 1957

PAUL P. O'BRIEN, C

**Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.**



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**Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.**



(Testimony of Noel B. Edwards.)

Q. Did you happen to be present at the meeting of October eleventh when your father-in-law made his complaint to the board of trustees?

A. Is that the one that took place in Dr. Ralston's office? [1884] Is that the one you are referring to?

Q. No; that was the meeting of November 21, I believe. This was a prior one.

A. Where was that meeting taking place?

Q. At the medical bureau office on the eleventh of October.

A. I don't think I was. I'm pretty sure I wasn't.

Q. Well, to get to the point, you mentioned a moment ago that the hearing before the trustees of the Walla Walla Society on the twenty-first of November, 1950, you did, in effect, state to the trustees that Dr. Robinson had not ever told you that Tom Brooks had syphilis, didn't you?

A. That was the meeting in St. Mary's Hospital? I can't get my dates.

Q. This was the meeting in Dr. Ralston's office. Perhaps it will refresh your memory if I read briefly from the record of that proceeding on the twenty-first of November which is Plaintiff's Exhibit No. 242.

Quoting from Dr. Robinson's statements:

"I have never told Mr. Edwards over the phone or at any other time that his father-in-law or his mother-in-law had syphilis, but I did say that there is a disease and I think I used the word 'virus' in

(Testimony of Noel B. Edwards.)

your [1885] father-in-law and mother-in-law, which is serious and has serious consequence to them because your father-in-law is not taking treatment and it might be that their children might have it.

“Mr. Edwards: I will concede to that statement of Dr. Robinson.”

A. That is correct.

Q. (Reading continued):

“Mr. Brooks: What was that?”

“Mr. Edwards: I said I would concede to the statement of Dr. Robinson that he did not use the word ‘syphilis.’”

Was that your testimony at that time?

A. That is correct.

Q. And now, getting back to this week end of October 7th and 8th, Mr. Edwards, did you listen in on certain telephone conversations between Mr. Brooks and Dr. Robinson?

A. Yes, I listened in on an extension line that my father-in-law had in his bedroom.

Q. When?

A. On the Sunday morning approximately around about 11:00 o'clock or thereabouts. [1886]

Q. Was that the call——

A. Mr. Brooks made to Dr. Robinson.

Q. Was that the only call you listened in on?

A. That was the only one, yes.

Q. To your knowledge, was Dr. Robinson aware that you were listening in?

A. To my knowledge, no.

(Testimony of Noel B. Edwards.)

Q. Incidentally, Mr. Edwards, who was it that requested you to appear at the meeting in St. Mary's Hospital on the twenty-second of May, 1951?

A. I couldn't tell you now.

Q. Do you have any idea?

A. It might have been Mr. Fullerton, I may have received a letter, or it might have been by my father-in-law; I just don't know.

Q. Were you in fact requested to appear at that meeting of May 22, 1951, at the St. Mary's Hospital?

A. If I was there I daresay I was requested to appear. Otherwise, I wouldn't have known about it.

Q. Well, don't you recall any conversation with anyone in respect to your appearing there?

A. Not right offhand, I can't recall.

Q. Could it have been Mr. Fullerton?

A. Could have been.

Q. Could it have been Dr. Tompkins? [1887]

A. Dr. Tompkins, up until this hearing, I didn't even know the gentleman.

Q. Whoever communicated with you and requested that you be there, did they discuss with you what you testified to that night?

A. Not to my knowledge. I don't recall any discussion whatsoever.

Q. Well, do you recall being there?

A. I recall being in the basement of St. Mary's Hospital. Yes.

Q. At a meeting of the medical society?

A. There was a meeting being held there.

(Testimony of Noel B. Edwards.)

Whether I got called at that time or not, I think I did.

Q. Just tell me what occurred that night from the time——

A. I can't recall just what happened. I can remember being downstairs on the outside and whether I got called in or not I just can't recall. I think I did.

Q. You think you did?

A. But if I did, what transpired and what was said and what wasn't said, I don't know.

Q. Who was with you? Was Tom Brooks with you?

A. I couldn't even tell you that. He wasn't with me, no.

Q. Did you see him there? [1888]

A. I think my memory was joggled by earlier testimony in this case that Mr. Brooks did come downstairs after visiting a friend of his upstairs.

Q. Had you told Mr. Brooks you were going to be there? A. That I couldn't tell you.

Q. Was Mr. Fullerton there with you?

A. That I couldn't tell you.

Q. Did you see Dr. Robinson there?

A. I couldn't even answer that question.

Q. You do recall, however, you went into the meeting?

A. I recall being in the basement of St. Mary's Hospital and undoubtedly I was in the meeting, I don't recall.

Q. Your memory is a complete blank?

(Testimony of Noel B. Edwards.)

A. As far as that is concerned, yes. I have, as is well known, a notorious memory. I have lived up until not so long ago just from day to day and occurrences that come along didn't mean one thing or another to me.

Q. You say you have a very poor memory?

A. I always have had. As a matter of fact, I am recognized for that.

The Court: What was that last remark?

A. I am recognized for having a very poor memory, your Honor.

The Court: Oh. [1889]

Q. (By Mr. McNichols): Did you tell the officials of the society during these meetings that you have a very poor memory? A. I doubt it.

Q. Did the matter ever come up?

A. Because at that time, things were comparatively new to me. This is five years later, six years later, I'm afraid a lot has transpired, interceded between since then that I don't recall.

Q. Well, in any event, you do recall at the November 21 hearing conceding to the board of trustees that Dr. Robinson never told you that your father-in-law was suffering from syphilis?

A. I conceded to that, yes.

Q. And is that a true statement?

A. That is a true statement. I might add there, though, whether he used "virus" or "disease" or just what he used, one didn't have to be an over-intelligent sort of a person to derive what he was getting at.

(Testimony of Noel B. Edwards.)

Q. And the question which I asked of you a few minutes ago [1892] with respect to the statements you made conceding the truth of Dr. Robinson's statement, that answer is a true statement, is it not?

A. I think that is what I said.

Q. That Dr. Robinson had at no time used that term "syphilis" in talking to you?

A. I conceded that point.

Q. Do you concede that now?

A. I will concede that now. To the best of my recollection, yes.

Mr. McNichols: Those are all the questions I have of this witness.

Mr. Kimball: No questions.

The Court: That is all then, Mr. Edwards.

A. Thank you, sir.

(Witness excused.)

Mr. Sembower: Your Honor, I would like to read into the record at this time the written interrogatories submitted to George F. Lull, answered by him in Chicago, March 19, 1956. [1893]

* * *

SAM R. PAGE

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Sam R. Page.

Q. And what is your address?

A. My home address?

Q. Yes, and your office address, if you please.

A. My home address is 1205 University. My office address is 120 East Birch.

Q. And what is your profession?

A. I am a physician and surgeon.

Q. Do you have any specialties in connection with the practice of your profession, Dr. Page?

A. No, sir.

Q. What official positions have you held in the society, The Walla Walla Valley Medical Society, since 1949?

A. I was president of the society in 1950, I believe.

Q. Any other positions? A. I think not.

Q. Were you a member of the board of trustees?

A. Yes, I was ex officio member at the time I was president and then the following year an ex officio member as a [1894] past president.

Q. Have you held any positions with the Washington State Medical Association? A. No, sir.

(Testimony of Sam R. Page.)

Q. Have you held any positions with the Walla Walla Valley Medical Service Bureau?

A. Not since that time.

Q. Did you hold a position at that time in the bureau?

A. No—pardon me just a minute. I believe that there was—I think I was an ex officio member of the bureau as the result of my being president of the medical society.

Q. Do you remember what that position would be? Would it be a member of the board, would that be the position you held?

A. I think that is correct.

Q. Is the president of the society always a member of the board of the bureau, if you recall?

A. If my memory serves me, it was during the time I was president.

Q. Now, you have been a member of the bureau itself for some time, I suppose? A. Yes, sir.

Q. How long would that be?

A. Approximately—well, since I came to Walla Walla, roughly twenty years ago. [1895]

Q. I believe that you stated on your deposition in this case that you derive, oh, an estimation of 10 to 15 per cent of your income from bureau cases, is that correct?

A. I remember that deposition and I avoided trying to give very definite and specific answer, but it was an estimate but I made it quite clear, I thought, that it was purely an estimate.

Q. Yes. I think your deposition reflects that,

(Testimony of Sam R. Page.)

that it was just an estimate. Did you have an opportunity since the deposition to look into the matter more specifically?

A. I had an opportunity, but I didn't do it.

Q. So that so far as you are able, all you can do is give an estimate, which would be approximately the same today as it was at the deposition?

A. That is correct.

Q. You say you practiced medicine here for about twenty years. I suppose you belonged to the society all that time?

A. Yes, sir.

Q. And the society was incorporated some years ago, but that would mean that you belonged to the predecessor group?

A. That is correct.

Q. Which was known as the society then?

A. Right. [1896]

Q. I believe, Dr. Page, that you participated in most of the meetings that seemed to be significant in the matter before us here, and I would like to trace through those to see if you were present.

First, I refer to the August 29th meeting, 1950, of the bureau at which Dr. Robinson's resignation was accepted. Do you recall being present at that meeting?

A. No, I do not. I may have been, but I do not recall.

Q. Well, then, there was the meeting on October the 11th, 1950, the so-called extraordinary meeting of trustees and grievance committee members on the date that Mr. Tom Brooks' complaint was taken down. You recall that meeting, of course?

(Testimony of Sam R. Page.)

A. Yes, sir, I do.

Q. I believe you called that meeting?

A. Yes, sir.

Q. Then on November the 9th a trustees' meeting was held after the regular meeting of the society which considered the matter of the Brooks' complaint and decided to go ahead with it. Do you recall that meeting?

A. I think that I do, but could you tell me where that meeting was held? It might help a little, I am a little confused. There are so many meetings at that time it makes it a little difficult.

Q. I am not at all surprised at that. That was held at [1897] the Grand Hotel?

A. Yes, I recall that meeting.

Q. Now, before proceeding with the other meetings, so we will keep this somewhat in chronological order, I would like to ask you if the local society's grievance committee came into existence during your presidency? A. Yes, sir.

Q. Was the creation of this grievance committee a project of yours, or what was the origin of the idea of having a grievance committee?

A. Well, it was no project of mine, it was voted on favorably by the society that we have a grievance committee.

Q. When did the matter of a grievance committee first come to your attention, if you recall?

A. A few weeks before it actually was voted on by the society. There was some comment among

(Testimony of Sam R. Page.)

some members in regard to the organization and the necessity of a grievance committee.

Q. And in what connection did that arise?

A. I don't really know, from my own information, specifically, excepting the meeting at which the grievance committee was authorized and the chairman was given authority to appoint members.

Q. When was that meeting?

A. I can't give you the date now. The record undoubtedly [1898] will show.

Q. Would that have been in about April of 1950?

A. It was in the early part of 1950, and I suspect it would be around in that period.

Q. How did the matter come before the society?

A. Pardon?

Mr. Sembower: Will you read the question, please?

(The paragraph was read.)

Mr. Sembower: At that time?

A. Somebody on the floor moved that the society form a grievance committee, or words to that effect.

Q. Do you remember who moved for the creation of the grievance committee?

A. I don't remember specifically. I am impressed that it was Dr. Stevens, who I knew had studied the idea of the grievance committee and seemed to me was the spark plug for the organization of a grievance committee.

Q. How did you know that he had made a study of grievance committees?

(Testimony of Sam R. Page.)

Q. And did he consent?

A. With some reluctance, yes.

Q. And did he, in fact, serve in that capacity?

A. I do not know.

Q. Well, then, as to the other three members, did you notify them of their appointment?

A. Yes.

Q. In what manner did you do it?

A. By word of mouth.

Q. And did you have any particular qualifications in mind for the members of the committee?

A. Yes.

Q. What were they?

A. I particularly wanted Dr. Stevens, since Dr. Lyman had declined to serve as chairman. I wanted Dr. Stevens as chairman because he had made a considerable study of the grievance committee recommendation that came through with quite some quantity of literature from the AMA and perhaps in the Northwest Medicine.

Q. Any other members, as such?

A. I think I appointed Dr. Yengling. [1902]

Q. Yes.

A. At that time I couldn't say why I specifically appointed Dr. Yengling. In the appointment of the third member of the committee, Dr. Bohlman, I had previously discussed with another physician who was a Seventh Day Adventist, because there was a large group and I felt that that group should somehow be represented. I had asked a Dr. Taylor, as a matter of fact, if he would serve, since he was

(Testimony of Sam R. Page.)

taking quite an active part in the work. He declined to serve in that capacity unless someone else could not be available. He suggested Dr. Bohlman and it met with my thought, and I talked with Dr. Bohlman and he accepted.

Q. Well, now, Dr. Page, you mentioned a moment ago that you had been practicing medicine here for some twenty years. Were you aware at the time that you considered Dr. Stevens for this appointment that he himself had been involved in a disciplinary action by the society?

A. I think I was. You said that he had been involved?

Q. Yes, that he had been.

A. I think I was.

Q. But that didn't concern you in this connection? A. Not a bit.

Q. Now, furthermore, I wonder if you were aware at the time of any controversy or widespread discussion concerning [1903] the eyeglass dispensing situation in the country?

A. Not any—I knew that there was some discussion in general in regard to that matter, but I wasn't actively concerned with it.

Q. Had you seen discussion, editorials, and articles about it in the *Journal of the American Medical Association*, perhaps?

A. I don't know that I did.

Q. Now, Dr. Stevens' practice is in that general area, is it not? A. That is right.

Q. Did it occur to you at all that, shall we say,

(Testimony of Sam R. Page.)

Dr. Stevens might be embarrassed by being chairman of a grievance committee with that particular situation an active one in the profession?

A. No, sir.

Q. Did you consider that at all in connection with his appointment? A. Not a bit.

Q. Now, let me see if we established the meeting at which you made these appointments. Would it sound possible to you that the appointment might have been made April 19, or somewhere along there, whatever meeting was held then, Dr. Page?

A. I stated awhile ago I didn't know the exact date, but [1904] the appointments were made shortly after the meeting in which the authorization was granted.

Q. And you didn't announce those appointments, did you? A. No.

Q. Was it in your intention at that time to create a so-called secret grievance committee?

A. No.

Q. What did you have in mind?

A. I felt that that committee had an awfully unpleasant job to do, that anyone they would approach to try to straighten out little problems that would come up would be rather unpleasant, and that there was some publicity either to be made in the newspaper or there had been publicity made in the newspaper and I wanted to avoid embarrassing the members of the committee so that many, many patients with serious complaints or reasonably serious complaints or even certain screwballs that might

(Testimony of Sam R. Page.)

pick up the thought, that they could call individual members and make a complaint, and I felt that they should be protected against that possible condition that might arise.

Q. And, now, did you have any precedent, Dr. Page, for the creation of such a committee but with the withholding of the names of it?

A. No, sir. [1905]

Q. Do you recall any discussion after that meeting about that, Dr. Page?

A. I don't recall any.

Q. Now, the June 20th meeting. The minutes of the special meeting of the Walla Walla Valley Medical Society held at St. Mary's Hospital, carries this entry in the fourth paragraph:

“The Executive Secretary reported on the formation of the grievance committee, stating that the committee had adopted its methods of procedure and that a public announcement of its availability and use had been made in the press. The president was asked for the names of the committee members and ruled that in his opinion the value of the committee would be seriously lessened if the names were announced.”

Now, I wanted to ask you, Dr. Page, if you know to what the Executive Secretary, who I assume is Mr. Fullerton, referred when he said that the committee had adopted its methods of procedure?

A. Well, when I appointed the committee, I named the committee to Mr. Fullerton. Therefore,

(Testimony of Sam R. Page.)

from then on the committee were on their own and I don't—

Q. Mr. Fullerton— [1906] A. Pardon?

Q. Mr. Fullerton did know the names of the members of the committee at that time?

A. Oh, yes.

Q. Well, what I was asking you about, however, was this reference to the rules of procedure. Do you know to what he referred there?

A. No, I had nothing whatever to do with that.

Q. But you are not aware that he had any rules of procedure at that time?

Mr. Rosling: Methods of procedure, counsel?

Mr. Sembower: Methods of procedure.

A. I have no information about that.

Q. No, do you know, Dr. Page, when, as a matter of fact, rules finally were adopted for the conduct of the grievance committee?

A. I recall a meeting at some time later in which there were rules adopted.

Q. When was that, about?

A. I don't remember that.

Q. Would it be soon after, or quite a while after?

A. I simply can't answer the question. I don't remember it.

Q. Well, now, would it refresh your recollection if I suggested that the rules were finally adopted on May 22nd, 1951? [1907]

A. I still don't recall the dates, but if the minutes would show that, that would certainly stand.

(Testimony of Sam R. Page.)

Q. Well, now, when you created this grievance committee, when you appointed this grievance committee, did it occur to you that the constitution might have to be amended to provide for it?

A. Well, I never considered any necessity of it.

Q. Did you consider it at the time? Did you examine the constitution at that time?

A. I didn't, I don't think.

Q. The next entry in the same minutes says:

“Dr. Holmes then moved, seconded by Dr. Moore, that the rulings of the president be referred to the board of trustees as to whether or not the information should be available to the membership of the society. Motion was carried.”

That action refers to the policy you had suggested of not disclosing the names?

A. That is correct.

Q. Did you disclose the name of Dr. Stevens on this occasion? A. On what occasion?

Q. At the occasion of this meeting, or did you withhold all the names?

A. No, I didn't disclose the name at all. [1908]

Q. Now, I would like to show you, Dr. Page, the minutes of the meeting of the board of trustees of the Walla Walla Valley Medical Society held July 18, 1950, at the Marcus Whitman Hotel, and I would like to call your attention to the minutes here where they recite, in the fifth line:

“Dr. Keyes moved, seconded by Dr. Lange, that the rulings of the Chair be confirmed. Motion carried.”

(Testimony of Sam R. Page.)

And this relates to the motion of Dr. Holmes, made at the society meeting of June 20th to refer the ruling of the Chair that the names of the membership of the grievance committee would not be made available to the membership of the society to the board of trustees for decision.

But now it appears that this sentence, "Dr. Keyes moved," is in darker type, and would that appear to you to be an addition to those minutes?

A. I'm sure it isn't an addition.

Q. Do you recall that that occurred at the time?

A. Yes, sir.

Q. Do you know who made that entry there?

A. No, I have no information.

Q. Have you ever seen this before to your recollection? A. No, sir. [1909]

Q. In line with your testimony just now, I find in your deposition, Dr. Page, Page 27, the statement:

"No, I don't think so. I think I should clarify this, that the grievance committee was an organization and I never had any real contact with the grievance committee in the normal routine manner."

Do you recall making that statement?

A. Well, I don't recall specifically making it, but the statement is correct.

Q. Yes, and, of course, you did appoint them, did you not, then have any further contact with this committee?

A. I had no more contact with them.

(Testimony of Sam R. Page.)

Q. You didn't require them to report back to you of any of the actions they were taking?

A. No, sir.

Q. You just let them go on their own?

A. That is correct.

Q. Well, now, Dr. Page, as a matter of fact, the situation got pretty much out of hand, did it not, with respect to this committee?

A. I would say no; I don't know of any way the situation got out of hand.

Q. How many grievances did the committee receive, if you know? [1910]

A. I don't know.

Q. It did, of course, receive—at least Dr. Stevens received a complaint concerning Dr. Robinson, did he not?

A. I am sure that is correct because there was quite a bit of communication in regard to that matter.

Q. Well, now, Dr. Page, would you say that Dr. Robinson's criticism or opposition to this committee disrupted its activities?

A. I couldn't answer that question. I had no contact with this committee after I had appointed them, except as was generally known such as these communications that we just referred to. The committee had no reason to report to me and I didn't require it and I have no more information about that.

Q. Well, Dr. Page, you, however, did assemble the extraordinary meeting of the trustees and grievance committee members, did you not, on October

(Testimony of Sam R. Page.)

the 11th, 1950? A. Yes, sir.

Q. Now, did you regard that as a grievance committee activity?

A. Not really. Well, all right, that is the answer, then.

Q. Why did you regard this as a different matter from the grievance committee, if I am construing your last answer correctly?

A. Yes. Well, Mr. Fullerton had contacted me and gave me the highlights of what was reported to be a report of Tom Brooks, [1911] which appeared to me as an extremely serious situation, if true. The grievance committee was not set up, as I understood it, to take care of serious matters.

Q. How——

The Court: Have you finished your answer?

Mr. Sembower: Yes, excuse me.

The Court: I think that is all. I didn't know whether you had finished.

Q. (By Mr. Sembower): However, it ostensibly, apparently, had handled a matter involving a so-called Edwards complaint, had it not, prior to that, prior to this October 11th meeting?

A. Yes, that is a matter, we knew that at that time.

Q. How did you know that?

A. I don't know whether I had gotten a letter in regard to that or whether there was some rather general conversation. I don't know how I knew that, I don't remember now.

Q. Did you know whether Dr. Stevens in con-

(Testimony of Sam R. Page.)

nection with the Edwards matter had ever called a meeting of his committee?

A. I don't know except testimony which has been given here and at the time. All these proceedings that took place about that time, that information was certainly available.

Q. Would it have caused you to be concerned as president of the society if you had known the chairman had handled a grievance by simply speaking with one member of the [1912] committee informally and not holding a meeting, as such, and then accosting a member of the society on the street and discussed it with him there?

A. You say, would it cause me concern?

Q. Yes.

A. I would congratulate him on trying to handle a relatively small matter in that manner.

Q. That is, in other words, you didn't have in mind that the committee to handle matters would convene as a committee necessarily?

A. If it would become necessary, perhaps, yes, but certainly on some small matter, I would think that the chairman would many times be able to handle little problems without having the full committee present.

Q. Well, little problems, Dr. Page, have a way of growing into big problems though, do they not?

A. That is very definitely evident.

Q. Would it have caused you concern as the president if you had known that the chairman of the grievance committee, having consulted with only

(Testimony of Sam R. Page.)

one member and then accosted the member on the street, the member of the society on the street, who I believe it has been testified on that occasion learned for the first time that the chairman was functioning as chairman, and then had written directly to a patient he didn't need to pay a bill? Would that [1913] have caused you concern as president of the society?

A. I don't believe it would.

Q. You think that would be a proper functioning for the committee as you conceived of it?

A. Does this presume that I feel that this particular case, that this patient was told he didn't have to pay a bill?

Mr. Tuttle: That is what he assumed, yes.

Mr. Sembower: Yes.

A. I am just wondering if I am to resume that.

Q. Yes, that is true.

A. I think I would probably be somewhat concerned then. I am not sure, however, that—I would have to know what the whole facts were, and I would have to be in on it at the time before I could answer your question very well.

Q. Would it make any difference to you whether the bill was large or small?

A. I don't think it would make any.

Q. Well, now, Dr. Page, with reference to this meeting of October the 11th, 1950, I believe you testified that Mr. Fullerton had gotten in touch with you. Was that by telephone?

A. That was by telephone.

(Testimony of Sam R. Page.)

Q. Did you have any conversation with him other than the telephone call? [1914] A. No.

Q. Did Mr. Fullerton on that occasion tell you that he had had any contact with Tom Brooks in any other way than by a telephone call? A. No.

Q. What was it about that call from Mr. Fullerton that impressed you sufficiently to assemble all the top men of your group there?

A. If this statement that Tom Brooks was supposed to have made was true, then an extremely serious situation had arisen which seemed to me was in violation of the principles of ethics, and I felt that type of a situation should be heard by the board of trustees.

Q. Rather than the grievance committee, as such?

A. Well, not knowing the entire facts on it, I did think it was wise to ask the grievance committee to attend the meeting.

Q. But you didn't think this was a matter you would want to refer to the grievance committee?

A. Well, I would have no business referring it to the grievance committee, anyway, but it didn't seem to me the type of complaint, if true, that the grievance committee would normally handle.

Q. Why was it different?

A. This is a serious charge. The grievance committee was [1915] organized to handle the minor complaints.

Q. Dr. Page, did you know Tom Brooks?

A. Not at that time.

Q. You did later become acquainted with him?

(Testimony of Sam R. Page.)

A. Yes.

Q. In what connection did you later become acquainted with him?

A. I was in some meetings in which he was present.

Q. What were those meetings?

A. Well, the first meeting was when he came and discussed with the group we were just referring to the complaint that he had made.

Q. That is, you mean these were meetings of the society, is that correct?

A. This was a meeting of the executive committee and the grievance committee.

Q. Had you met him in any other way?

A. No.

Q. Had you met him at that time? A. No.

Q. Had you met him socially? A. No.

Q. Mr. Brooks testified that he was an investigator for an insurance company from 1948 to 1952, oh I believe to the present. Had he investigated any cases that you had been [1916] in in which he had gotten in touch with you? A. No.

Q. Dr. Page, do you recall Dr. Robinson going to your house on October the 10th, 1950?

A. Dr. Robinson was at my home one time and it fits in about that time.

Q. Do you remember the conversation you had there with him? A. Parts of it.

Q. Was there anyone else present at the time?

A. No.

Q. On that occasion, Dr. Robinson asked you to

(Testimony of Sam R. Page.)

inform him of the names of the members of the grievance committee, did he not?

A. I don't remember.

Q. Do you remember any parts of the conversation? A. Yes.

Q. Did he discuss the Edwards complaint with you? A. I don't know.

Q. What do you recall about the conversation?

A. The most outstanding thing that I recall was that Dr. Robinson said, "I am going to sue somebody. I don't know who it is going to be, but I am going to sue somebody. I think it will be Dr. Stevens, but I am still going to sue somebody."

Q. Now, this was on October the 10th about 1950? [1917]

A. If it was my home, that was the only time Dr. Robinson was there.

Q. Did you tell him on that occasion who the members of the grievance committee were?

A. I don't think so.

Q. Now, that was the same date, however, was it not, Dr. Page, that Tom Brooks had been notified to come to the special meeting which was going to be held the next night? A. I don't know.

Q. Did you discuss with Dr. Robinson at that time anything about the meeting which was scheduled for the eleventh?

A. I'm sorry that I have to stall a little on this. You talk about the meeting scheduled for the eleventh and there are so many meetings I don't know what meeting you refer to.

(Testimony of Sam R. Page.)

Q. Yes. Well, the meeting, the extraordinary meeting, of the trustees and the board members, as I recall, was held on the eleventh.

A. Well, then, I did not discuss that.

Q. And the night on which Dr. Robinson stopped by your home, I believe, was October the 11th, the night before——

Mr. Rosling: That is counsel's statement as to the date of that meeting, the visit to Dr. Page's home, and Dr. Page has not testified that Dr. Robinson came out on October 10th. [1918]

The Court: No, I don't think he ever has definitely fixed the date.

Mr. Sembower: No, I don't think he has.

The Court: He said, "If October 10th is the day I talked to him, that is what it is, because that is the only time I did," but he has not said it was October the 10th.

Q. (By Mr. Sembower): Do you remember if that meeting was before this evening at which Tom Brooks appeared or was it afterward?

A. I don't remember that.

Q. Now, Dr. Page, at the time you talked with Mr. Fullerton about calling the special meeting, did you ask him if he had made an investigation of this complaint? A. No.

Q. Did you ask him the extent of his contact with Mr. Brooks relative to the matter?

A. If I didn't ask him, he gave me over the phone the information that Mr. Brooks had called him and Mr. Fullerton reported to me essentially the

(Testimony of Sam R. Page.)

highlights of what Mr. Brooks had reported to Mr. Fullerton. Then Mr. Fullerton gave me the highlights of the report of Mr. Brooks.

Q. And it was on the basis of what Mr. Fullerton told you that you considered this an extremely serious matter?

A. If it were proved to be true, yes.

Q. And then you suggested that he call the particular members [1919] that he did call, is that correct?

A. That is correct.

Q. And those names were selected by you?

A. Well, those names, they represented two groups of people in the medical society, the trustees and the grievance committee.

The Court: We'll take a recess at this point of ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Page, did you receive a copy of Dr. Robinson's letter written August the 11th, I believe it was, 1950, in which he detailed his reasons for criticizing the bureau?

A. I am sure I did. I don't remember specifically now the contents, but I am sure that I received the letter.

Q. Did you read that letter? A. Yes, sir.

Q. What was your reaction to that letter?

A. I didn't agree with his reasons for criticizing, or rather I didn't agree with his criticism.

Q. Did you then later read the letter written by

(Testimony of Sam R. Page.)

Balcom Moore written about September 21st, 1950, in which he answered Dr. Robinson?

A. I don't think so.

Q. Dr. Robinson resigned from the bureau, I think his [1920] resignation was accepted about a week after the eleventh; Do you recall that?

A. Well, I know that his letter—I know that his resignation was accepted, but I don't remember the time and the dates.

Q. Did you think that Dr. Robinson had been co-operative with the bureau? A. I didn't know.

Q. Did you form any beliefs concerning Dr. Robinson's relationships with the bureau?

A. No.

Q. Were you sorry that he resigned from it?

A. I didn't care one way or the other.

Q. Now, Dr. Page, when Mr. Fullerton called you about his telephone conversation with Tom Brooks and you were considering calling together the meeting that met on the eleventh of October, did you ask Mr. Fullerton if he had taken down a written complaint from Mr. Brooks?

A. No, I didn't ask him.

Q. Did you think it was at all necessary at that time?

A. I had understood at that time that this was to be the written complaint, that he wanted to make his complaint to this particular group, and then when it was made, it would be his official written complaint.

Q. Well, now, Dr. Page, didn't it occur to you

(Testimony of Sam R. Page.)

that possibly this conversation which Mr. Fullerton had maybe had been [1921] with a crank or just a harebrained person that had no significance to what he was saying?

A. The answer to that is no, it didn't occur to me, that Mr. Fullerton apparently was perfectly sincere in his feeling in regard to the matter.

Q. Wouldn't it have been——

A. And not knowing Mr. Brooks, I certainly would not presume that it would be some harebrained crank.

Q. You would presume that it had substance, is that correct? A. Definitely.

Q. Didn't it occur to you that it would be extremely embarrassing to call together these busy men of importance, doctors here, to talk with some man who is just a voice on the end of a telephone?

A. My answer to that is that it would have been very embarrassing to have a situation of that sort arise reported by the executive secretary and for me to do nothing about it. This meeting was called in the evening and I don't believe the men were so busy that it would jeopardize their practice of medicine to attend that meeting.

Q. Dr. Page, what had been the extent of your contacts with Dr. Robinson prior to this time?

A. No particular contacts except that I would perhaps see him in the hospital and maybe it would be attending meetings that we would have prior to that time. No [1922] particular contact that I can recall.

(Testimony of Sam R. Page.)

Q. Had you been associated with him in the practice of medicine in any way? A. No.

Q. Any social contacts with him? A. No.

Q. Did you know anything about his background very much? A. No.

Q. You had seen him at the society meetings?

A. Yes.

Q. Had he spoken there?

A. Not that I recall.

Q. Had you read any letters that he had written?

A. Well, yes, I think I read all the letters he wrote.

Q. Of course now by this time you did know a little something about how he felt about the grievance committee, did you not?

A. Well, now, what time do you mean? I thought awhile ago you said prior.

Q. No, I am fixing—— A. Well, I'm sorry.

Q. ——on the date of the eleventh, on the date of October the 11th.

A. You said before that time.

Q. Yes, up to that time. [1923]

A. All right. Now, what is your question, please?

Q. My question is, had you read letters from him up to that time? No, I'm sorry. I passed that question. What I meant was to say that you knew by this time how he felt generally about the grievance committee, did you not?

A. I'm not sure of the timing on that. I read the letters that he sent to me, as well as other people,

(Testimony of Sam R. Page.)

and if that time came before this meeting that you refer to, then I knew how he felt in regard to it.

Q. How did you feel in regard to it?

A. In regard——

Q. To the letters. You said, “I know how we felt with regard to the letters.”

A. I felt the letters—you mean the letters in regard to his criticism of the grievance committee?

Q. Well, the letters that you had received up to about this time.

A. I felt he was mistaken in his criticism. I didn't agree with his criticism at all.

Q. Well, now, you said, “I knew how we felt about these letters.” Who else did you mean “we”?

A. I don't think I said that.

Mr. Tuttle: I believe he said “he.”

A. If I did, it was in error.

Mr. Tuttle: He said how he felt. [1924]

A. Pardon?

Mr. Sembower: I don't want to presume on the witness.

Q. My thought was that you had said, “I knew how we felt about it.”

The Court: I think he said “he.”

Mr. Sembower: Did he say “he”?

The Court: I think so. Is that what you intended? A. Yes.

Q. (By Mr. Sembower): I will ask you, then, had you discussed these letters with other members of the society at all? A. Officially, you mean?

Q. Officially or unofficially.

(Testimony of Sam R. Page.)

A. Unofficially, I think comments were made about the letters that were written and criticisms that were offered.

Q. What were those criticisms?

The Court: About the criticisms, wasn't it?

A. Yes.

The Court: He said criticism was made.

Mr. Sembower: I'm sorry, I must be sitting in a sound pocket.

The Court: The acoustics are those of a typical old court room.

Q. (By Mr. Sembower): You said about the criticism? A. Yes. [1925]

Q. Well, had you heard any criticisms among the members of the society of these letters?

A. Generally speaking, the members of the society had received, I think, all of these letters, unless there are certain specific letters that he had sent to officers of the society that had not been generally received but generally speaking I think the conversation that would be perhaps in the hall or in the scrub room or what have you was that they were not favorable to his criticisms; that the criticisms were not warranted.

Q. Was it your impression that the belief was that these criticisms, that his criticisms, were negative, not constructive criticisms? What was the reaction?

A. Well, I could give only my individual opinion in regard to that.

Q. What was your own individual opinion?

(Testimony of Sam R. Page.)

A. My individual opinion is that they were not constructive.

Q. Now, as to that meeting of the eleventh, you presided at the meeting?

A. I honestly don't know. I don't know whether—I was present, I think.

Q. Well, it would be natural for you to preside, I suppose, since you called the meeting together, or would Dr. Stevens have presided, or do you know?

A. That meeting was called to hear Mr. Brooks, and I feel in [1926] my own mind we were completely individuals at that time. I can't be technically wrong, I don't have any recollection of that.

Q. You say completely individuals, now was this a constituted meeting of the society or was it a gathering of individuals?

A. Well, it was a meeting of the grievance committee—not the grievance committee.

Q. Well, what would you say the meeting was of?

A. Well, I had a blank just at the moment for this particular committee that represented the society. The board of trustees.

Q. Oh, I see. Well, of course, you heard at this meeting, you heard Tom Brooks' story, did you not?

A. That is right.

Q. Did you hear anybody else at that meeting?

A. No.

Q. And then you arranged for the transcript of that meeting to be written up, is that correct?

A. That is right.

(Testimony of Sam R. Page.)

Q. And then later to be considered at a meeting of the trustees? A. Correct.

Q. Now, the meeting of the trustees was held, I believe, on November the ninth, 1950, at which the purported statement of Tom Brooks was considered. Do you recall, [1927] does that seem reasonable to you? A. I think that is the date.

Q. Did you, Dr. Page, at or about that time, receive a letter from Dr. Robinson relative to the grievance committee?

A. Well, I received several letters, and I don't remember specifically about that.

Q. Let me get that and ask you.

Mr. Rosling: Four hundred twenty-four.

Mr. McNichols: What is the number, Mr. Rosling?

Mr. Rosling: Four hundred twenty-four. Correction, it is thirty-seven.

Mr. Sembower: Yes, I think it is thirty-seven.

Q. I show you, Dr. Page, Plaintiff's Exhibit No. 37 and ask you if you recall seeing this before?

A. I don't want to take the time to read all of this, but I am quite sure that I have seen this before.

Q. Would this be properly described as Dr. Robinson's complaint against the grievance committee?

A. I think so.

Q. Do you remember when you received that?

A. No.

Q. Do you remember when you received this in

(Testimony of Sam R. Page.)

relationship with the meeting of the trustees on November the 9th?

A. I don't remember that. [1928]

Q. Would it help your recollection if I asked you whether you received it before that meeting or after that meeting?

A. No, it wouldn't help. I don't remember the date on that.

Q. Would this refresh your recollection at all? I believe that Dr. Tompkins testified that Mr. Fullerton had in his possession a copy of this letter date stamped received on about the ninth or something like that and the Brooks complaint on the night of the meeting of the ninth. Did you recall that at all?

A. I don't recall this as far as this time is concerned as to the chronological order of this.

Q. Do you recall whether there was any discussion at that meeting of the ninth of the fact that this letter to the board of trustees had been sent out by Dr. Robinson?

A. What transpired at that meeting of the ninth, may I ask?

Q. Well, now, that is the meeting at which Mr. Brooks' complaint was considered by the trustees; that is, it had been taken down, transcribed, and was considered at that time.

Mr. Kimball: Why don't you let him look at the minutes?

Mr. Sembower: Yes.

Q. I'm showing you the minutes of the meeting of, of the special meeting of the board of trustees of

(Testimony of Sam R. Page.)

the Walla Walla Valley Medical Society held at the Grand Hotel [1929] Thursday, November 9, 1950, at 9:15 p.m.

A. All right, now, what is your question?

Q. Well, I wanted to ask you if you recall at this meeting any discussion of Dr. Robinson's complaint against the grievance committee?

A. No, I don't recall any.

Q. I would like to ask you also in connection with this meeting, I notice that the members present include Drs. Page, Tompkins, Keyes, and Ralston, and the others present were Drs. Lyman, Johanneson, Stevens, and Attorney Judd Kimball and C. E. Fullerton.

Now, why were there others present other than the members of the board?

A. Members of the board is not a closed meeting. Any member could attend the meeting without any question, he wouldn't be questioned. This might have been at the time or near when we were having a regular meeting in which other members might have been in the same building. I don't know the answer to your question, but I know that it would be easily understandable that other members of the society would or could attend that meeting.

Q. Could Dr. Robinson have attended this meeting?

A. I think he could.

Q. It seems that I recall that this meeting was held after a regular meeting of the society, is that correct? [1930]

A. I couldn't answer that, I don't know.

(Testimony of Sam R. Page.)

Q. Do you remember how long this meeting lasted? A. No.

Q. Well, what was taken up at the meeting, Dr. Page? Do you recall that?

A. Yes, the thing that was taken up was the complaint of Tom Brooks.

Q. Yes. Well, now, what action was taken, if you recall, at that meeting with respect to that?

A. It was decided to hold another meeting at which we would invite or require, I believe, Dr. Robinson to come and present his side of the story and to have Tom Brooks come and present his side of the story, and we would go over the pros and the cons of the situation and try to come to some solution as to what disposition to make of it.

Q. Dr. Page, did you know at this time that Mr. Fullerton had five days after the meeting of October the 11th written the state society, Mr. Neill, and asked him for information of operation of the state grievance committee?

A. I don't know whether I knew it at that time or not.

Q. Did you direct Mr. Fullerton to write such a letter? A. I am not sure.

Q. You may have?

A. Well, I just don't recall. [1931]

Q. Could it have been that you wanted to know what the procedure of the state society was with reference to a grievance committee at this time?

A. Well, I would have wanted to know, yes, but I don't remember whether I had directed Mr. Ful-

(Testimony of Sam R. Page.)

lerton or whether he did it upon his own as the Executive Secretary.

Q. Was there any particular reason, Dr. Page, why the meeting was called? This special meeting was called on the ninth, that you recall.

A. The ninth of what month?

Q. November the 9th.

A. We called that meeting as soon as we conveniently could call it to comply with the bylaws of the society.

Q. Was there a time element in the bylaws in respect to this meeting?

Mr. Rosling: John, will you please make clear whether you are talking about the meeting of November 9th or the meeting of November 21st?

Q. (By Mr. Sembower): Is it clear in your mind we are discussing the meeting of November 9th?

A. Is that the meeting we held at Dr. Ralston's office?

Q. That is the one where you just read the minutes. A. No.

Q. Oh, you were thinking of the 21st?

A. I was thinking of the one at the later [1932] date.

Q. Oh, well, I wondered why you called this on the ninth?

A. I think we had just at that time or the day or so before that time received the transcript of Mr. Brooks' complaint.

(Testimony of Sam R. Page.)

Q. This meeting actually was called on the spur of the moment, was it not, Dr. Page?

A. I don't—what do you mean the spur of the moment?

Q. Well, I mean you didn't call it any length of time ahead, you just called it right at the moment virtually?

A. I can't answer that question, I don't know.

Q. You don't recall?

A. No, at the moment I don't.

Q. About the transcript, do you know to whom the transcript was delivered?

A. It logically would have been delivered to Mr. Fullerton, but I am not positive.

Q. When did you first see the transcript?

A. I think at this meeting of November the 9th.

Q. You don't recall ever having seen it at any earlier time?

A. I don't recall.

Q. Did you ever talk to Miss Curts about this transcript?

A. I think not.

Q. Did you ever ask her for a copy of this transcript?

A. No.

Q. You are certain you didn't ask her for a copy of this transcript? [1933]

A. You are referring to the transcript when Mr.—

Q. That is on the ninth, yes, the Brooks statement.

A. Made his original complaint?

Q. Yes, that's right.

A. I did not ask her for a copy.

Q. Dr. Page, I have here a return receipt for

(Testimony of Sam R. Page.)

registered letter dated the 8th of November, 1950, and I ask you if you recognize the signature that appears under your name? A. Yes.

Q. Who is it? A. It is my secretary.

Mr. Sembower: I ask that this be marked Plaintiff's Exhibit for Identification.

The Clerk: It will be Plaintiff's Exhibit 514 for Identification. Do you want them clipped together?

Mr. Sembower: Yes, clipped together, please.

Q. Dr. Page, does this refresh your recollection that you received a registered letter on the eighth of November containing Dr. Robinson's complaint against the grievance committee?

A. This would indicate that I received a registered letter, but I would have no information from this as to what the contents of the letter was.

Q. I was just asking if that refreshed your recollection? [1934] A. No. It does not.

Mr. Sembower: I will not introduce this at this time.

Q. Dr. Page, did you at any time doubt Dr. Robinson's diagnosis of the disease in the Brooks family?

A. I had no reason really to be concerned over his accuracy of the diagnosis.

Q. What would be your answer, then, that you did not doubt it—

A. No, I didn't doubt it.

Q. Dr. Page, had you had any meetings before of the trustees at which there was a court reporter present and an attorney and so on, that you recall?

(Testimony of Sam R. Page.)

A. Before this?

Q. Yes, before this.

A. This first meeting when Mr. Brooks was present?

Q. That's right. A. I think not.

Q. Now, Mr. Kimball, the attorney for the society, attended also the meeting of the ninth. Did he customarily attend your meetings? A. No.

Q. Now, then, passing on to the meeting of the twenty-first, Dr. Page, you do recall that meeting?

A. Yes.

Q. What occurred at that meeting? [1935]

A. We are referring to the meeting that was held in Dr. Ralston's office?

Q. I believe so. That was the meeting of the society, was it not?

Mr. Kimball: No, I don't think so.

Q. (By Mr. Sembower): A meeting of the trustees? A. That's right.

Q. Now, Dr. Page, do you recall what occurred on the day before that meeting?

A. Nothing specifically at the moment any more than any other day.

Q. Well, didn't you have a meeting on the day before the twenty-first? A. I don't recall it.

Q. Didn't you have a special meeting on November the 20th at which you considered the petition or the signed slips which Dr. Robinson had collected from various members of the society who wanted a special meeting to consider the perpetuation of the grievance committee?

(Testimony of Sam R. Page.)

A. You mean when he requested a special meeting be called?

Q. Yes.

A. I remember that, but I didn't remember the date on which——

Q. I will give you the minutes, in case you want to refresh your recollection. You can hold this while I ask you a few questions out of it. [1936]

Do you recall Dr. Robinson talking with you, Dr. Page, and asking that a meeting be called at which his complaint against the grievance committee would be considered? A. Yes, sir.

Q. Where did that conversation take place, if you recall? A. I don't remember.

Q. Do you remember what was said, what you said to him and what he said to you? A. No.

Q. Would it refresh your recollection if I suggested that you talked with him on the eighth or ninth and he asked what the agenda would be at the ninth meeting, do you remember that?

A. I don't remember that.

Q. Well, you do remember Dr. Robinson asking that a meeting be called to consider that matter, is that correct? A. Yes.

Q. And what did you tell him?

A. I don't remember.

Q. Well, did you say you were going to have a meeting, or you would not have a meeting?

A. Now, the detail of this I don't recall.

Q. All right.

A. However, may I add just a point? He had,

(Testimony of Sam R. Page.)

according to the rules, a special meeting could be called if a sufficient number of member doctors joined with Dr. Robinson.

Q. Yes. A. And they did.

Q. Yes.

A. Now, if that was presented, then the meeting would have been called.

Q. Yes.

A. And, undoubtedly, that was the condition that took place and the meeting was called.

Q. Now, did you set the time for these meetings?

A. I doubt if I did. My custom was to contact Mr. Fullerton, who is the Executive Secretary, and between perhaps the two of us, the timing was probably set in that manner, but I don't at the moment recall anything about that.

Q. You don't know, then, who set the date of the special meeting of November the 20th?

A. I do not know who set it.

Q. Wasn't it an unusual circumstance that you would have two meetings in consecutive order like that, the meeting on the twentieth and then the trustees meeting on the next day, the twenty-first?

A. It was an unusual situation occurred about that time.

Q. Well, what was that unusual circumstance?

A. Dr. Robinson, we had just received this shortly before [1938] that we had received this complaint. And now, I don't want to take the ball, but it seems easy to confuse the medical society meeting and the board of trustees. That is a little difficult

(Testimony of Sam R. Page.)

perhaps and maybe I have confused that. But it certainly would not be unusual to have this special meeting set at a certain date, which probably would be the earliest date that we could call for Dr. Robinson's request of a special meeting, and the meeting in Dr. Ralston's office was timed to allow so much time in accordance with the rules of procedure.

Q. Well, now, when you refer to an unusual occurrence taking place, are you referring to the Brooks complaint against Robinson or the Robinson complaint against the grievance committee, or both?

A. I am saying at this particular time that we are going through this, it was an unusual situation.

Q. Had you ever had in your recollection a special meeting of the society called upon a petition of members?

A. Not to my knowledge.

Q. Do you remember that meeting, the meeting at which the grievance committee was considered?

A. At this special meeting that you refer to?

Q. Yes. A. Yes, I remember that.

Q. Then the grievance committee had a close call that night, [1939] did it not, 15 to 14?

A. The grievance committee won in the vote by one vote.

Q. By one vote. Now, referring to the trustees' meeting of November the 11th, 1950, that, I believe, was the meeting that voted to refer Dr. Robinson's case to the new state grievance committee, is that not correct?

(Testimony of Sam R. Page.)

Mr. Kimball: What was the date?

Mr. Sembower: November 21st.

Mr. Kimball: I believe you are in error, counsel. That was the meeting that was held to hear the complaint of Dr. Robinson and the defense of Brooks, November 21st, in Ralston's office.

Mr. Sembower: Let's ask the witness what occurred on that date, November the 21st, 1950?

A. If my memory serves me correctly, it is the time that we had the meeting in Dr. Ralston's office. That is, as I recall, the time.

Q. You have the minutes there, you refresh your recollection there on the twenty-first.

Mr. Kimball: Do you want the transcript, Mr. Sembower?

A. Well, this, you understand, was not a meeting of the society. This twenty-first was not the meeting of the society.

Q. (By Mr. Sembower): Well, I show you then the transcript here, Dr. Page, of the meeting held on the twenty-first. [1940] Do you recall the meeting from that transcript?

A. Yes, I am familiar with this.

Q. Well, then, what did this meeting do? What was done at this meeting of the 21st?

A. Mr. Brooks presented his signed complaint and discussed his case before the group of doctors there, and Dr. Robinson was there and presented his defense against the accusations that Mr. Brooks had made.

Q. Was Mr. Noel Edwards there?

(Testimony of Sam R. Page.)

A. At least part of the time.

Q. Did not Mr. Noel Edwards at this meeting concede that Dr. Robinson did not use the word "syphilis" in talking with him?

A. I would not be sure of that meeting, I mean as to the minutes of that meeting, as to what he might have said. If the transcript indicates that he did, then undoubtedly it would be correct.

Q. Reading from the transcript at page 29, I will ask you, Dr. Page, if you recall the statement of Dr. Robinson saying:

"In the first place, it is perfectly true that I made a number of phone calls to members of the family. I went to Edwards to talk to her about the letter. As to the exact number of phone calls and the exact time [1941] they were made, I think I called Mr. Brooks twice, he called me once. I remember calling Mr. Edwards once, stopping by his place of business once that I know of.

As far as this statement that I made any threats, I deny that absolutely. Mr. Brooks has stated, he implied I talked about nothing but this letter. I talked about the fact that I was going to have to give up his case. That is the primary reason that I made the telephone calls and caused me to give up the case, and because of giving up their case, I would have to do certain things, report it to Mr. and Mrs. Brooks and the other members of the family.

"I never told Mr. Edwards over the phone or any other time, that his father-in-law or mother-in-law had syphilis, but I did say there is a disease. I think

(Testimony of Sam R. Page.)

I used the word 'virus' in your father-in-law and mother-in-law which is serious and has a serious consequence to them because your father-in-law was not taking treatment and it might be their children might have it."

And the transcript says:

"Mr. Edwards: I will concede to that [1942] statement of Dr. Robinson."

And now Mr. Brooks said:

"What was that?"

And Mr. Edwards said:

"I said I would concede to the statement of Dr. Robinson that he did not use the word syphilis."

Do you remember that testimony?

A. I have a recollection, I think that was said. I don't recall specifically, but I think that he did say that.

Q. Dr. Page, were you not also in attendance in the hearing before the state grievance committee held the following spring? A. Yes, sir.

Q. And did you hear a similar statement made by Mr. Edwards on that occasion?

A. I am inclined to think that I did. I am not just sure of that.

Q. Dr. Page, referring to your transcript, page 53—

Mr. Kimball: You mean the deposition?

Mr. Sembower: The deposition, the transcript of the deposition.

Q. I find these questions and I ask you if you

(Testimony of Sam R. Page.)

recall giving the answers. Mr. McNichols was asking the questions. He said: [1943]

“Q. Just one thing I was going to ask with respect to Mr. Sembower’s question.”

I had proposed a question just before.

“Did you ever have occasion personally or at a meeting to consider the merits of Dr. Robinson’s contention that he had not threatened this man, but that he had said to him, ‘You must come in for treatment because you have syphilis. If you don’t come in for treatment, there is nothing else I can do.’ And then when this furor arose, he said, ‘I don’t feel that we can maintain the doctor-patient relationship’ ”?

And the transcript shows that you answered:

“I have never heard this thing you are describing.”

And then the question:

“You have never heard that defense raised by Dr. Robinson?”

And you stated:

“I have never heard that that was correct.”

And then the question:

“Have you ever heard that defense raised and discussed by Dr. Robinson?”

And you said:

“No, I haven’t.” [1944]

Do you remember those questions and answers?

A. Yes, sir.

Q. Dr. Page, I show you Plaintiff’s Exhibit No. 39 dated November the 10th, 1950, a letter addressed

(Testimony of Sam R. Page.)

by you to Dr. Miles Robinson, and I show you also a letter, Plaintiff's Exhibit No. 444, dated November 15, 1950, a letter from Mr. Fullerton to Thomas R. Brooks, and I call your attention to the fact that in your letter to Dr. Robinson you state that—

* * *

Q. (By Mr. Sembower): Dr. Page, I call your attention to the fact that you do not state in your letter to Dr. Robinson that he may be represented by counsel, but that Mr. Fullerton in his letter states to Mr. Brooks: "And you will also be permitted to be represented by counsel if you so desire."

I ask you if you are aware of the different instructions [1945] given to these two parties?

A. I have no particular recollection of this and this perhaps might not—I might not have known specifically that this letter was written.

Q. You think, then, that Mr. Fullerton was in error in giving those instructions to Mr. Brooks?

A. No.

Q. You think that it was proper, then, for Mr. Brooks to have counsel and Dr. Robinson not to have counsel?

A. May I answer that in my own way instead of just a yes or no?

Q. Yes, I'm not asking for a yes or no answer.

A. All right. Mr. Brooks is not a member of the medical society and does not know the specific rules that govern this problem. Dr. Robinson did.

Q. That was the reason for your distinction?

(Testimony of Sam R. Page.)

A. Well, I think it was unnecessary to tell him, a member of the medical society that he was entitled to be represented with counsel. It is indicated in the rules of the—constitution and bylaws.

Q. What is indicated?

A. That in a situation of a defense of this sort that he is entitled to have counsel. At least, that is my understanding and I am reasonably sure that is correct.

Q. Could you be in error? [1946]

A. Well, it has been so many years since I have read the rules.

Q. Dr. Page, I believe that the annual meeting was held on December the 14th, 1950, was it not? This was the next meeting in sequence, do you remember? A. I think that is correct.

Q. Do you remember a speech given there by Dr. Stevens? A. Not specifically.

Q. Now, do you remember the meeting of March the 27th, 1951, held by the local society to approve the grievance committee rules? Do you remember that meeting?

A. Well, I know there was such a meeting. I was not president at that time and I don't remember any more than that there was a meeting held.

Q. Do you remember anything about the consideration of the grievance committee on that occasion as to whether it was approved at that time or not?

A. Well, now, the record would have to show that. I simply don't recall the details.

Q. You don't have any independent recollection

(Testimony of Sam R. Page.)

of that? A. Not specifically.

Q. Now, Dr. Page, we are approaching the meetings in the spring, but before I ask you about that, I would like to ask you about this provision in the disciplining of members, the bylaws, in which it states: [1947]

“If the accused person is a member of this society, the board shall investigate concerning the matter alleged, and shall use kindly efforts in the interest of peace, conciliation, or reformation, as far as possible and expedient. If after investigation the board believes the charges warrant further proceedings, it shall cause a written copy of the charges to be served on the accused member at least ten days prior to the date the board of trustees proposes to hold a hearing on the charges, which hearing shall be adjourned from time to time as necessary.”

Now, what kindly efforts, using the words here exactly, “in the interest of peace, conciliation, or reformation” were carried out to your knowledge by the members of the trustees in connection with this matter, if any?

A. Well, I recall a telephone conversation, just speaking of one individual, to Dr. Robinson, at which he indicated that he would simply not be present at that meeting that we refer to.

Q. What meeting is that?

A. The one we held in Dr. Ralston’s office where we were to hear Mr. Brooks and Dr. Robinson’s answer. Sometime prior to that meeting, Dr. Robin-

(Testimony of Sam R. Page.)

son and I had a [1948] conversation over the telephone and——

Q. Now, you regard that as a peaceful effort. He did, however, attend that meeting, did he not?

A. Dr. Robinson did attend that meeting.

The Court: You don't want the telephone conversation?

Mr. Sembower: Oh, I beg your pardon. Yes, I would like to have the telephone conversation.

The Court: I think he is just answering your question as to what efforts were made at conciliation.

Mr. Sembower: Indeed.

Q. What efforts were made?

A. I talked to him and he apparently had the rules in his hand and I had the rules in mine and I tried to persuade him that he should not decline to come to the meeting, that it was to his interest.

Q. Now, what meeting was this relating to?

A. This was the meeting in which the board was to hear Dr. Robinson's answer to the complaint of Mr. Brooks.

Q. Yes.

A. The one that was held in Dr. Ralston's office, and Dr. Robinson at first declined, saying that he didn't have to attend the meeting, and I indicated that we would have to call the meeting anyway to follow the rules, and we picked one particular word that he interpreted [1949] as making it essentially mandatory that he attend this meeting. I don't recall now the particular word, but he was very hostile

(Testimony of Sam R. Page.)

over the whole idea that he had to attend this meeting.

Q. But then did he attend the meeting?

A. Yes. But at that particular time, the question of counsel arose and he was instructed over the phone that he was entitled to counsel. I think that was one person's effort to try to use kindly efforts to help him.

Q. Now, Dr. Page, what kindly efforts were exercised prior to his notice for that meeting?

A. I really don't know.

Q. Did you exercise any kindly efforts personally?

A. From the time that this situation arose, I had talked to Dr. Robinson on many occasions, but he seemed to be completely adamant.

Q. You are testifying that you talked to him on numerous occasions? A. Yes.

Q. Prior to the notice of the meeting?

A. Yes.

Q. Where did those conversations take place?

A. At least one of those conversations took place in the hall of St. Mary's Hospital and it appeared to me he had one thing on his mind and only one thing: "I have [1950] been wounded and I am going to get some results."

Q. Well, now, Dr. Page—were you finished?

A. Yes.

Q. Were charges ever served upon Dr. Robinson that you recall?

(Testimony of Sam R. Page.)

read some depositions that were taken some little time ago.

Q. Did you ever know that earlier than that time? A. No, I did not.

Q. Before I leave that May 22nd meeting, Dr. Page, I would like to ask you if you know who got in touch with Mr. Edwards prior to that meeting?

A. No.

Q. Did you ask anyone to get in touch with Mr. Edwards? A. No.

Q. Did you arrange for anyone to discuss Mr. Edwards' testimony? A. No. [1953]

Q. Did you know of any discussions with Mr. Edwards relative to his testimony, that he might change his testimony on that occasion from the prior occasions? A. No.

Q. You know of no discussions along those lines?

A. I know of none.

Q. Mr. Edwards did appear at that meeting, did he not? A. That is correct.

Q. I want to ask you, Dr. Page, about your statement in the deposition, on Page 46, in which it appears:

“Q. Did you have any view concerning his mental condition?

“A. Well, I had a general impression that his conduct was somewhat peculiar, let's put it that way.

“Q. Would you say that it was paranoiac?

“A. As I understand paranoiac, yes.

“Q. What about rumors or reports of previous

(Testimony of Sam R. Page.)

mental breakdowns, did you ever hear that he had had any?

“A. Not specifically other than a rumor, perhaps that there had been. I don’t believe at the time this was going on I had heard that, but some years I believe I have heard that there had been a mental breakdown.” [1954]

Do you remember making those statements?

A. Yes, sir.

Q. Have you since making those statements made any inquiry or determined whether as a matter of fact Dr. Robinson ever did have a mental breakdown? A. No, sir.

Q. Do you know of your own knowledge whether he has ever had a mental breakdown? A. No.

Q. Is it your testimony today that you believe he is paranoiac?

A. My testimony today is that I believe his actions were peculiar.

Q. Do you wish to change your testimony that it was paranoiac at this time in the medical sense?

A. I feel that it was along that paranoid tendency, but as far as changing the testimony, I don’t believe I specifically stated that in the deposition.

Q. What materiality, Dr. Page, would that have in connection with the proceedings which were carried on by the society concerning Dr. Robinson?

A. None.

Q. In your opinion, did your belief that he was paranoiac condition your views with respect to Dr.

(Testimony of Sam R. Page.)

Robinson's case as it progressed through the society? [1955] A. No.

Q. Dr. Page, did you attend the hearing of the Judicial Council on December the 2nd, 1951, at Los Angeles? A. Yes.

Q. I believe that you and Dr. Tompkins were the representatives from here, is that correct?

A. That is correct.

Q. Was any objection made there by you, Dr. Page, that the notice was inadequate at that meeting, the notice given to you representatives of the society?

A. Well, I felt that it was very definitely inadequate, but I don't remember specifically making that as a type of a complaint.

Q. But was there any objection made, formal objection made, to that effect?

A. Not to my knowledge.

Q. Did you make any objection to other conditions there at the Judicial Council hearing?

A. Formal objections, no.

Q. Dr. Page, I want to return for one question to the May 22nd meeting. I believe that you were the one who put the motion for the expulsion of Dr. Robinson? A. Yes.

Q. Your motion was to expel him, whereas the recommendation of the state grievance committee at that time, or the [1956] directive, was for six months expulsion, is that correct?

Mr. Kimball: Just a moment, you are not stating the question the way the minutes read, counsel.

(Testimony of Sam R. Page.)

Mr. Sembower: Well, I will state it again so there will be no controversy.

Mr. Kimball: Read the minutes.

Q. (By Mr. Sembower): You did put the motion, is that correct? A. I did.

Q. And was the motion for expulsion?

A. Yes.

Q. And that motion carried? A. Yes.

Q. Was that the same action which the state grievance had determined upon?

Mr. Rosling: Just a minute, your Honor. The action of the state grievance committee was a recommendation. It was not determined upon or directed as counsel stated a minute ago.

Mr. Sembower: I don't want to characterize it in any way. I just want to ask the witness. I will rephrase the question to say:

Q. Did the motion for expulsion conform with the communication from the state grievance committee? [1957]

A. The communication was a recommendation, sir.

Q. All right.

A. But I don't quite understand——

Q. It was for six months, was it not?

A. That was their recommendation.

Q. Well, and your motion was for expulsion, is that correct? A. Yes.

Q. Why did you make a motion for expulsion instead of six months suspension?

(Testimony of Sam R. Page.)

A. In the first place, it was not the responsibility of the local society to follow the suggestion of the state grievance committee. In other words, it is not necessary in any way that we should do it. In the next place, and I think more important, the bylaws of our society indicated that if a person were suspended for a period of time, that at the end of that time, the suspended member would automatically become a member of the society again. At that particular meeting, there was no feeling that I had, anyway, that Dr. Robinson in any way had changed or would change his mind in the six-month period as to whether or not he was right or wrong on this particular serious charge; that we, according to the bylaws, would then be expected, if we expelled, we would then review his application and other merits of the individual, and he would either be admitted to the medical society again or not [1958] admitted.

Q. In other words—

A. I felt that this was a situation that expulsion was the only reasonable treatment for Dr. Robinson.

Q. So that you thought the society might want to never readmit him to membership?

A. That is your statement, not mine, as to what I thought. The society, at the end of a year—we expelled him and at the end of a year, according to the rules, he would be in a position again to reapply, at which time his application would be considered.

Q. Did you have any expectation of what might happen at the end of a year? A. No.

(Testimony of Sam R. Page.)

Q. Dr. Page, was there any discussion held on your motion that you recall? A. Yes.

Q. Did you discuss the motion along the lines you have just said? A. Yes. [1959]

* * *

ALFRED ERNEST LANGE

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please? [1962]

A. Alfred Ernest Lange.

Q. And what is your address, Dr. Lange?

A. Residence, 926 Alvarado, Walla Walla; business address, Baker Building.

Q. And what is your profession?

A. Physician and surgeon.

Q. And do you have any specialties, Doctor?

A. By training, internist. By practice, modified general practice.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Dr. Lange, how long have you practiced medicine in Walla Walla?

A. Since the last of July, 1923.

Q. Have you during all that time belonged to the Walla Walla Valley Medical Society or its predecessor group? A. Yes, sir.

(Testimony of Alfred Ernest Lange.)

Q. Since 1949, what positions, if any, have you held in the society?

A. Since 1949, would be a member of the board of trustees.

Q. And do you remember what your term was?

A. I believe it was one year, though I couldn't swear as to that.

Q. Would it sound reasonable to you that that would be the year 1950? [1963]

A. I was on the board of trustees in 1950.

Q. What positions, if any, Dr. Lange, have you held in the Washington State Medical Association?

A. None, except a member of some of the committees.

Q. Any of those committees recently since 1949?

A. No, sir.

Q. Are you a member of the Medical Service Bureau? A. Yes, sir.

Q. How long have you been a member of the bureau?

A. Since its inception. I believe that was about 1932 or 1933.

Q. And have you held any positions in the bureau since 1949?

A. Yes, sir, but I couldn't state just which ones. We had different screening committees and everything else there at its inception, and I think all doctors had their turns on that.

Q. Yes. Dr. Lange, I will ask you about the various meetings which took place of the society and the trustees beginning in the fall of 1950 at which it

(Testimony of Alfred Ernest Lange.)

appears that the so-called Robinson matter was discussed in one way or another.

And, starting first with the meeting of the society on September 26th, 1950, I find your name among the persons present at that meeting. Do you [1964] remember attending the meeting of September 26th, 1950?

A. I would have to see the minutes to refresh my memory on that.

Q. Dr. Lange, I will hand to you Defendants' Exhibit 446, which is the so-called old minute book of the society, so that you may refresh your recollections from the minutes, if you desire.

Dr. Lange, I believe that on the occasion of this meeting, there was a discussion of the grievance committee, was there not?

A. I see no record of that in this meeting here of September 26th.

The Court: Did the witness say he attended the meeting?

Mr. Sembower: Yes.

Q. Do you recall attending the meeting?

A. Oh, here is one on the 26th.

Q. Yes.

A. As to just what the details of that meeting were or what the discussion was, that I could not recall. Apparently, it was a general business meeting of the society where many different things were discussed.

Q. Do you remember Dr. Robinson at that meeting voicing criticism of the grievance committee?

(Testimony of Alfred Ernest Lange.)

A. I don't recall whether at that meeting or at other [1965] meetings, I know that he did in other meetings.

Q. The minutes show, I believe, in the last paragraph there that speaking on the matter were Doctors Robinson, Stevens, Keyes, Carlson and Tompkins. Does that refresh your recollection as to any remarks that may have been made by Stevens, Keyes, Carlson and Tompkins?

A. It does not on that meeting.

Q. Well, now, Dr. Lange, do you remember receiving a copy of a letter dated August the 11th, 1950, to the bureau written by Dr. Robinson?

A. (No response.)

Q. August the 11th, 1950?

A. I couldn't recall any dates there. There were a number of letters received.

Q. Do you remember this particular letter?

A. I think the mimeographed—I could not remember it by that date, no, sir.

Q. When was the first, Dr. Lange, that you learned of the so-called Edwards complaint against Dr. Robinson relative to a charge of a dollar and a half?

A. I believe that was at a medical society meeting we had in the nurses' lecture room at St. Mary's Hospital one evening where the matter of the grievance committee came up for general discussion and also this letter.

Q. Would that possibly have been this meeting of September [1966] the 26th?

(Testimony of Alfred Ernest Lange.)

A. It seems to me it was later now. I wouldn't say for sure as to that.

Q. Do you recall at this meeting of September the 26th any discussion of whether a letter should be sent by the grievance committee to the Edwards relative to the complaint?

A. As I say, I don't recall any of the details of that September 26th meeting.

Q. Do you remember any discussions that were held relative to the sending of a letter to the Edwards relative to the complaint about the dollar and a half?

A. I don't know if that was discussed at that meeting or not, and if there was a letter sent, it would be a letter sent by the grievance committee itself, I am sure.

Q. Did you at this time on September the 26th know of the constituency of the grievance committee? A. I did not.

Q. At that time, was the membership of the grievance committee known to the society, or do you just yourself not recall it?

A. I couldn't vouch for anyone else except for myself.

Q. Did you at this time know that Dr. Stevens was chairman of the grievance committee? [1967]

A. I couldn't say whether it was at that time or at some subsequent time.

Q. Do you remember when you first learned that Dr. Stevens was the chairman of the grievance committee? At about what time?

(Testimony of Alfred Ernest Lange.)

A. Well, it would be along in the time there that the matter of the Edwards case came up. Whether it was before or after that letter was written, that I could not say definitely.

Q. Now, Dr. Lange, referring also to September the 26th, which I think you find still in that old book, there was a meeting of the trustees held on the same date as the meeting of the membership, a regular business meeting, and I find your name among those listed present. The meeting apparently was held at the Marcus Whitman Hotel. And I wonder if you recall that meeting taking place?

A. The minutes say so and my name is there. I will go by the minutes on that.

Q. Well, you don't remember that it didn't take place, then? A. No.

Q. Do you remember any discussion, Dr. Lange, at that time relative to an initiative pending before the voters of the state relative to medical treatments, and so on? A. I am afraid I do not.

Q. Now, I notice, Dr. Lange, that the meeting of the [1968] society was held at St. Mary's and the meeting of the trustees was held at the Marcus Whitman. Was that the normal pattern of holding these meetings, if you recall, to hold one meeting at St. Mary's and then the other meeting at a hotel or at another location?

A. There has been no regular, definite place of meeting. Regular medical society meetings with scientific programs are usually dinner meetings.

(Testimony of Alfred Ernest Lange.)

Those were at hotels. Any special meeting and occasionally some others, but it would be rather rare to have a scientific meeting except as a dinner meeting, special meetings and that, and at times just straight business meetings of the medical society, were held at different places.

Q. Where in the Marcus Whitman Hotel were the meetings held, Dr. Lange, of the trustees?

A. In the regular scientific meetings, why, it would be in the large dining room.

Q. But for a meeting like this attended by Doctors Page, Tompkins, Keyes, Lange, Ralston and Fullerton, would you hold that in a parlor or a meeting room or in the restaurant, or how did you convene a small group like that?

A. Probably one of the large tables in the coffee shop or in the small dining room there.

Q. I see. And you would have refreshments there, and so [1969] on, while you had your general discussion? A. We had our food.

Q. Now, Dr. Lange, referring to the meeting of the trustees on October the 10th, which I think carries us into the new minute book—no, I guess it is still in the old book, sorry.

The meeting of October the 10th, Dr. Lange, it is not in the minutes because it was apparently a special meeting which was convened to consider the complaint by Thomas Brooks—

Mr. Kimball: Counsel, do you mean October 11?

Mr. Sembower: Perhaps I do.

Mr. McNichols: Yes.

(Testimony of Alfred Ernest Lange.)

Q. (By Mr. Sembower): Do you recall that meeting? A. Yes, sir.

Q. Do you recall who got in touch with you about the meeting?

A. I can't remember definitely on that, but I would think that would be Mr. Fullerton, our executive secretary, that gave me the message.

Q. Do you remember any explanation which he made about the purpose of the meeting?

A. That it was to consider charges by Mr. Brooks.

Q. Did you ask him anything about the nature of those charges before you went to the [1970] meeting? A. Not that I recall.

Q. Now, this meeting of October 11th, Dr. Lange, was attended by Doctors Page, Tompkins, Yengling, Lyman, Lange, Bohlman, Fullerton, Kimball, Tom Brooks, and Miss Curts. the reporter.

What was it your understanding that this was a meeting of? I mean, how was this group assembled and constituted together for the purpose of the meeting?

A. In observing those present, I would say they were members of the grievance committee and board of trustees and one or two of the older men of the medical society. Whether they had definite offices at the time or not, I couldn't say.

Q. Do you remember, Dr. Lange, of any discussion taking place at that meeting or after the meeting concerning Mr. Fullerton writing to the state as-

(Testimony of Alfred Ernest Lange.)

sociation relative to the pendency of a grievance against Dr. Robinson?

A. At that meeting? No, I have no recollection of anything like that at that meeting.

Q. Dr. Lange, are you acquainted with Thomas Brooks? A. Yes.

Q. In what connection did you become acquainted with Mr. Brooks?

A. The first time I met Mr. Brooks was at this meeting of October 11th in the medical service bureau office. [1971]

Q. Have you met him at any time since?

A. At a subsequent meeting when the board of trustees held a hearing. Dr. Robinson was present at that meeting, not at the first meeting the complaint was made.

Q. Do you belong to any clubs which Mr. Brooks also belongs to, Dr. Lange, which you recall?

A. I understand from his testimony he belonged to one of the Masonic lodges, but whether it was number 7 or 13, I couldn't say. If it is number 7, why, then we would be in the same lodge, though I have never seen him at lodge because I don't go too often myself.

Q. I see. Now, also did Mr. Brooks ever get in touch with you relative to an investigation for an insurance company?

A. For insurance companies, yes.

Q. On what occasions did he make those investigations, if you recall? About when?

A. About what?

(Testimony of Alfred Ernest Lange.)

Q. About when did he make those investigations that he got in touch with you about, contacted you?

A. I couldn't recall whether it was one or two years after this matter first began or whether it wasn't. It seems to me that it was subsequent to the beginning of this trouble.

Q. Dr. Lange, did you have any conversations with any of [1972] the defendants in this case relative to Dr. Robinson's letter of August the 11th, 1950, in which he criticizes the bureau?

A. Not that I can recall.

Q. Or did you have any conversation with Dr. Balcom Moore about it?

A. I just couldn't say.

Q. Did you know that Dr. Balcom Moore wrote a letter answering Dr. Robinson?

A. I didn't know that until just recently.

Q. Had you ever talked to Dr. Pratt about Dr. Robinson's letter of August the 11th?

A. It would be hard to say. It was probably discussed among various different members, but as I recall, there was very little discussion about it.

Q. Dr. Lange, approximately what proportion of your income would you state is derived from the bureau activities?

A. It is a very minor part.

Q. Can you conjecture, can you make an estimate as to a percentage?

A. Just be impossible, because our office, it isn't broken down into separate parts. The medical service bureau might possibly have records of that. I would not have separate ones, but I would estimate

(Testimony of Alfred Ernest Lange.)

that probably not over a matter of fifteen per cent. Probably somewhat [1973] less than that.

Q. With whom do you practice, Dr. Lange?

A. In our offices, there are Dr. Falkner, Dr. Holmes, Dr. Campbell, Dr. Lyman and myself.

Q. Now, on the meeting, Dr. Lange, of October the 24th of the trustees, I will hand you those minutes so that you may refer to them, if you wish. I call your attention to an entry there concerning the grievance committee and ask you if you recall the discussion which took place at that time? I find your name among those present among Doctors Page, Ralston, Lange, Keyes and Fullerton.

I probably should inquire first if you recall attending the meeting?

The Court: What is this meeting?

Mr. Sembower: This is October the 24th meeting of the board of trustees.

A. Those were minutes of the meeting in which we tried to get some methods of procedure in regulation of the grievance committee.

Q. Do you remember what the nature of those procedures were, Dr. Lange?

A. First was that the complaint be submitted in writing and given to the executive secretary of the society, which at that time was Mr. Fullerton. [1974]

Q. Were those proposed procedures, Dr. Lange, drafted with the so-called Edwards complaint against Dr. Robinson in mind?

A. With no particular person in mind, no.

Q. They related, however, to securing a written

(Testimony of Alfred Ernest Lange.)

report, did they not, of the complaint and in the preferring of charges, and so on?

A. Well, it would be that all complaints, regardless of who made them, would have to be made in writing.

Q. Now, do you remember whether at this meeting the Edwards letter was considered, the letter written to the Edwards by Mr. Fullerton from a draft prepared by Dr. Stevens?

A. That I couldn't say definitely. I would say that at least in general discussion, probably was, because this date is subsequent to that time and it would be very unusual for anyone to not discuss that kind of a matter.

Q. Do you remember the gist of that discussion?

A. I couldn't say as to that.

Q. We have had some testimony, Dr. Lange, to the effect that any members of the society could attend the meetings of the trustees. Was that a fact?

A. Oh, yes. There are no secret meetings.

Q. Just any member of the society would be welcome to come [1975] to the meeting? A. Yes.

Q. How would the society members know where the meeting was going to be held and when, and so on, to attend?

A. They were notified by the society.

Q. They received notification, you say?

A. But sometimes the meetings would be after a medical society meeting and it would be just announced from the chair that there would be a meeting of the trustees. That could happen.

(Testimony of Alfred Ernest Lange.)

Q. Dr. Lange, do you recall receiving around November the 8th or 9th, a communication from Dr. Robinson under date of November the 7th in which he filed a complaint against the grievance committee?

A. I know there was a complaint filed, but at which time I couldn't say.

Mr. Sembower: I will ask that what purports to be a return receipt of a registered letter bearing the date of November 8th, 1950, be marked Plaintiff's Exhibit for identification number——

The Clerk: It will be Plaintiff's Exhibit No. 515 for identification.

The Court: 515?

The Clerk: 515.

The Court: All right. [1976]

Q. (By Mr. Sembower): Dr. Lange, I will show you Plaintiff's Exhibit for identification No. 515 and ask you if you recognize the signature on the return receipt bearing the date November 8, 1950?

A. Yes.

Q. What is the signature?

A. Sarah Jane Martin. She was at that time one of our secretaries.

Q. And the name above was your signature?

A. That is not my name.

Q. That is your name?

A. That is my name.

Q. Signed with your authorization?

A. Well, there is no authorization. It was that I was out of the office and that registered letter came.

(Testimony of Alfred Ernest Lange.)

Q. And she had the authority to accept registered letters and sign it in the fashion that we find here?

A. Well, no definitely designated authority, it was just what would go on in most any office, probably.

Q. Yes, in the normal course of business.

A. Giving a receipt in the ordinary course of business.

Q. Thank you.

A. And that letter I think you will find in the records that were turned over to the defense counsel.

Q. Do you recall what the letter was? [1977]

A. No, I can't. I wouldn't attempt to testify on the details of it. I haven't seen that letter for several years.

Mr. Sembower: I will not introduce it at this time.

The Court: Did you offer it?

Mr. Sembower: If there is no objection, I will offer it. Otherwise, I haven't really completed proof on it.

The Court: All right.

Q. (By Mr. Sembower): Dr. Lange, were you aware of the meeting of the trustees held on November the 9th, 1950, at the Grand Hotel?

A. There was one meeting in there, the medical society and the trustees' meeting afterwards, which because of practice I had to miss.

Q. And you were not in attendance at this meeting on November the 9th?

(Testimony of Alfred Ernest Lange.)

A. There was the one meeting in there that I could not be present.

Q. I don't find your name among those in attendance. I find that the Trustees Page, Tompkins, Keyes and Ralston were present, and others were Doctors Lyman, Johannesson, Stevens, Judd Kimball and Mr. Fullerton.

Do you know, Dr. Lange, any reason why the others than the trustees were present?

A. If it was after a medical society meeting, why, then it [1978] could have been that just others had drifted around and knew of the meeting and just were present, as was their privilege.

Q. Was it customary for the society's attorney, Mr. Kimball, to attend trustees' meetings?

A. Only after the importance of this action or possibility of action came up against us.

Q. At this time—you refer to the possibility of this action, you stated that. To what do you refer when you say that, Dr. Lange?

A. Because of the charges of Dr. Robinson.

Q. The charges that Dr. Robinson had made?

A. The complaint of Mr. Brooks, when Mr. Brooks made that first complaint, we realized the seriousness of the situation and we had legal counsel at practically all of our meetings, if not all of them, thereafter.

Q. What was particularly serious about the Brooks complaint that would require you to have an attorney present?

A. Because Mr. Brooks complained there that

(Testimony of Alfred Ernest Lange.)

Dr. Robinson had made a threat to obtain privileged communication in order to obtain a letter from his son-in-law.

Q. Did you hear from any of the defendants, Dr. Lange, relative to this meeting of the 9th? Did they tell you afterwards what occurred?

A. I probably did or it was read in the minutes later. [1979]

Q. This was the meeting at which it was decided to proceed with the Brooks matter, was it not?

A. The minutes would show that.

Q. You don't have any independent recollection of that?

A. No.

Q. Dr. Lange, do you recall Dr. Robinson requesting a special meeting of the society to be held concerning the grievance committee?

A. Yes, sir.

Q. What do you recall in that connection?

A. That there was quite general discussion pro and con for the continuance of the grievance committee.

Q. I find your name, Dr. Lange, among those who attended the special meeting of the society held on November the 20th, 1950, to consider Dr. Robinson's complaint against the grievance committee, and ask you if you recall what took place at that meeting?

A. Where was that meeting held, if I may ask?

Q. To refresh your recollection, this, I believe, was the meeting which was called at Dr. Robinson's petition when he secured a number of signatures asking for a special meeting to be called, and it was

(Testimony of Alfred Ernest Lange.)

held, it appears from the minutes, at St. Mary's Hospital.

The Court: What date was that, Mr. Sembower?

Mr. Sembower: November the 20th. [1980]

The Court: That was the meeting of the society, wasn't it?

Mr. Sembower: That is correct, the special meeting.

A. What was your question again, Mr. Sembower?

Q. I asked you a general question, whether you recall the meeting or not? Do you recall attending that meeting? A. Yes.

Q. This was the meeting, was it not, at which the motion to abolish the grievance committee lost by one vote, 15 to 14? A. Yes, sir.

Q. Do you remember at this meeting also a motion being made to reconsider the Edwards letter that had been written by Mr. Fullerton at Dr. Stevens' direction? A. Yes, sir.

Q. Did you speak in connection with the consideration of that motion? A. Yes, sir.

Q. Do you recall what you said on that occasion?

A. I believe that that was the occasion on which I said that rather than—well, one request that was made by Dr. Robinson was that the board of trustees write a letter of apology to Dr. Robinson, and that at that time I stated that after careful study of that letter, I [1981] could see no objections, and that before I would be guilty of signing a letter of apology to Dr. Robinson on the basis of the grievance com-

(Testimony of Alfred Ernest Lange.)

mittee's letter, I should immediately wish to resign from the board of trustees.

Q. Did you include in your suggestion that you might resign under those circumstances, that you might resign from the society? A. I did not.

Q. Only the board of trustees?

A. Board of trustees.

Q. Dr. Lange, had you at this time read the constitution and bylaws of the local society?

A. I have read them at different times in the past and they have been revised, but to state any particular sections and that, why, that of course would be impossible I believe for anyone, unless they made it a point to memorize it.

Q. Had you at this time read the ethics of the American Medical Association relative to information and contagious diseases?

A. Yes. State law tells that.

Q. And you had also read the state statutes. Had you read the constitution and bylaws of the Washington State Medical Association? [1982]

A. I can't say whether I read them in toto.

Q. But you think you may have read them in part with reference to the issues in this particular matter then pending?

A. I do believe that I read some of them, at least.

Q. Now, Dr. Lange, the following night, November 21st, was the meeting held—Dr. Lange, before I leave the Edwards letter, your answer confused me a

(Testimony of Alfred Ernest Lange.)

little bit. Did you have in your mind that this was a letter to Dr. Robinson apologizing, that this proposal was to write a letter to Dr. Robinson, the trustees apologizing to him, or a letter directly to the Brooks—to the Edwards—relative to the letter that had been sent out by Dr. Stevens and Mr. Fullerton?

A. As I remember it, the apology was to be to Dr. Robinson.

Q. Is that your recollection of what you had in mind at that time?

A. That was my recollection of it.

Q. I ask you, Dr. Lange, about the second entry in the minutes, which states:

“To decide whether or not the board of trustees should write a letter to Noel Edwards stating that the grievance committee exceeded its authority in its letter of September 30, 1950, to him about Dr. Robinson and asking that he disregard this [1983] letter.”

Does that refresh your recollection at all as to the form of this letter that was before the house?

A. I would go on the minutes there before I would my memory.

Q. Would you still have opposed the writing of a letter to the Edwards on the same basis that you mentioned a moment ago?

A. With that same letter?

Q. Yes.

A. The interpretation that was put on it and that, I would still say the same.

Q. And you would have resigned from the

(Testimony of Alfred Ernest Lange.)

trustees had a letter to Mr. Edwards along those lines been written?

A. With the sensible letter that the grievance committee wrote and by careful studying of that letter, punctuation and everything else, I could see absolutely nothing objectionable in that letter and I would have felt derelict in my duties as a member of the board of trustees not to have supported the grievance committee in their action.

Q. Did you at that time, Dr. Lange, know that a meeting of the grievance committee, as such, had not actually been held on the letter to be sent to the Edwards?

A. Well, there was that letter as of the grievance committee. [1984]

Q. Would it have made a difference to you had you known that the grievance committee had not actually met and considered it as a committee, the letter to the Edwards?

A. Well, as I recall, the grievance committee consisted of three members and that any two members were a majority.

Q. And you felt that it could function with Dr. Stevens having an informal conversation with Dr. Yengling?

A. If they were both members of the grievance committee; yes.

Q. Dr. Lange, was the sending of a letter directly to a patient directing them not to pay a bill, did that have a precedent in the history of the society? A. As I recall that letter—

(Testimony of Alfred Ernest Lange.)

Mr. Kimball: If the Court please——

A. ——they were not directed——

Mr. Kimball: Just a moment.

The Court: Just a moment.

Mr. Kimball: I object to the statement of counsel of what the letter says. It is the best evidence and speaks for itself.

Mr. Sembower: I will withdraw the question.

The Court: Yes; all right.

Q. (By Mr. Sembower): Was it your construction of this letter, Dr. Lange, you said you read it, that it instructed the Edwards not to pay the dollar and a half [1985] bill?

A. It mentioned that it be not paid but in an advisory manner.

Q. You don't think——

A. It was not an order.

Q. I see. If it had been an order, would you have felt as you did about the letter?

Mr. Kimball: If the Court please, I think that is objectionable.

The Court: Well, this is cross-examination. I will overrule the objection. I didn't get what the answer was.

A. Will you please repeat the question?

Q. (By Mr. Sembower): If it had been a direction not to pay the dollar and a half, would you have felt the same way about that letter?

A. If it had not been a direction?

The Court: The letter.

Q. (By Mr. Sembower): You stated a moment

(Testimony of Alfred Ernest Lange.)

ago that you didn't think it was a direction, but it was conditional. Now, if it had been a direction, would that have changed your attitude in the matter?

A. If it had been a definite order, it may have changed my attitude entirely, but it was not an order, it was advisory.

Q. That was your construction of the letter as you read it? [1986] A. Yes, sir.

Q. I find your name, Dr. Lange, among those who were present at the meeting of the board of trustees on November the 21st, which was a hearing of the complaint by Mr. Thomas R. Brooks. Do you recall attending that meeting?

A. That was in the offices of Dr. Ralston?

Q. That is correct.

A. I was there; yes, sir. That was the first hearing that I recall.

Q. Dr. Lange, do you recall any participation that you had in that meeting?

A. I believe that—you mean as far as asking any questions? Q. Yes; yes.

A. I may have asked some questions, it is hard to say.

Q. I believe the vote was unanimous there, was it not, to sustain the complaint?

A. I believe it was unanimous.

Q. In other words, you voted for it?

A. Yes, sir.

Q. Dr. Lange, how well did you know Dr. Robinson at this time, if you recall?

(Testimony of Alfred Ernest Lange.)

Mr. Kimball: What do you mean by this time?

Mr. Sembower: I mean at the time of the 20th of November—21st of November, 1950. [1987]

A. Just very casually, more by sight than by actual personal contact.

Q. Had you had any contact with him, close contact with him, in professional matters?

A. Not that I recall.

Q. Social matters? A. No.

Q. Had you become acquainted with him in connection with bureau activities?

A. Not that I recall; no.

Q. Society meetings or activities there?

A. Just society meetings, perhaps.

Q. Did you, Dr. Lange, consider the provision in the constitution and bylaws providing for:

“If the accused person is a member of this society, the board shall investigate concerning the matter and shall use kindly efforts in the interest of peace, conciliation, or reformation.”

Did you take that into account in connection with the November 21st meeting? A. We tried to.

Q. Did you, yourself, make any inquiry as to whether kindly efforts in the interest of peace, conciliation, or reformation had been attempted?

A. I couldn't say as to that; no. [1988]

Q. Did you, yourself, make any such attempt?

A. Not that I recall.

Q. Dr. Lange, were you aware that there had been a communication from the society to the state

(Testimony of Alfred Ernest Lange.)

grievance committee prior to this meeting of November 21st, 1950?

A. I couldn't say as to that. I know after the meeting, sometime after that, just which date I couldn't say, then we did take it up with the state grievance committee.

Q. But you don't recall that any steps had been taken prior to this date?

A. I couldn't say yes or no to that question.

Q. Dr. Lange, you do know, do you not, that Dr. Pratt wrote a letter to Dr. Robinson's father relative to this matter of his expulsion?

A. I heard that he had.

Q. When did you first learn that?

A. That I couldn't say, whether it was before or after his expulsion.

Q. Did you talk with Dr. Pratt about Dr. Robinson's mental condition?

A. I may have talked about the vagaries of it.

Q. What vagaries do you refer to?

A. Oh, that any individual could read all the things that he read into that letter of the grievance committee, for [1989] one thing.

Q. Any other vagaries?

A. The thing that came out in the hearing of November 21st meeting, that was that first meeting, his tendency to be very evasive of different questions that were propounded to him.

Q. Did you consider that evidence of mental state?

A. Well, whether mental perturbation or not

(Testimony of Alfred Ernest Lange.)

would be a question. It seemed to me that if it were just a matter of nervousness, he was certainly more nervous than most that I have ever seen under similar circumstances.

Q. Dr. Lange, have you ever seen a doctor under similar circumstances in a disciplinary proceeding?

A. Yes.

Q. On how many occasions have you seen that?

A. There is at least one before that I remember.

Q. Do you mean in the local society?

A. Yes, sir.

Q. And who was that?

A. It was when we took up a matter of a complaint of Dr. Brooks—or Dr. Rooks, not Dr. Brooks—Dr. Rooks against Dr. Stevens.

Q. And when was that, if you recall?

A. Well, that was before any grievance committee had been established. [1990]

Q. And what was the disposition of that matter?

A. That was amicably resolved.

Q. And Dr. Stevens was not nervous on that occasion? A. Well——

Q. I mean, comparing him with Dr. Robinson, that was your standard, Dr. Stevens?

A. There was no evasiveness in his questions and answers, none at all.

Q. Have you ever observed any other doctor in similar circumstances?

A. I couldn't recall right at this minute since that time.

(Testimony of Alfred Ernest Lange.)

Q. Would you say that paranoia characterized Dr. Robinson's state of mind?

A. At that time, I would say no.

Q. But would you say that at some other time it did?

A. I think that he has at least showed some of the characteristics. To come right out and say paranoic, why, that is a pretty hard thing to say.

Q. You are using the word paranoia in the medical sense, are you not? A. Beg your pardon?

Q. You are using the word paranoia in a medical sense? A. Yes.

Q. Now, you said that you may have had some conversations with Dr. Pratt relative to this. When and where did [1991] those take place?

A. Oh, they would happen when we met in the hospital or happened to be going out of the hospital, meeting. It was a general topic of conversation among the whole medical profession. It would have been unnatural if doctors hadn't discussed it when they met. But to pick out any particular time and place it happened, that would—

Q. Well, what doctors that you recall participated in these general conversations?

A. Why, all of them so far as I know. There weren't any particular doctors that didn't discuss it, whether they were pro or con.

Q. They were all discussing it?

A. Yes; as far as I know.

Q. To your knowledge, was any investigation

(Testimony of Alfred Ernest Lange.)

made to ascertain whether Dr. Robinson had a history of mental illness?

A. Not so far as I know.

Q. Well, was this a matter of just jocular comment or serious comment around the washrooms? Where did it take place?

A. Well, some of them were really pretty much frightened.

Q. Who was frightened?

A. I couldn't name any definite ones, but I know there were [1992] some of them that were very much concerned.

Q. What were they concerned about?

A. They were concerned that Dr. Robinson might possibly become violent and do either them or their families harm.

Q. Well, did you know of any past history of violent conduct on the part of Dr. Robinson?

A. I did not.

Q. Did they mention any specific instances of past conduct along that line?

A. Not that I recall.

Q. Do you recall the meeting held shortly after the expulsion meeting of May the 22nd at which this matter was discussed among various of the doctors and Dr. Pratt was asked to get in touch with Dr. Robinson's father?

A. You say that was after the expulsion?

Q. Well, did it occur before? Do you recall such a meeting?

A. I don't recall it definitely. I know there was conversation at some time that Dr. Pratt was sup-

(Testimony of Alfred Ernest Lange.)

posed to know the family and that he was going to write them.

Q. Where did that conversation take place?

A. Oh, I couldn't say as to that. So much conversation all around there, I couldn't say whether it was in committee meeting or whether it was outside of committee meeting.

Q. Did you make any personal inquiry to determine whether [1993] Dr. Robinson had a history of mental illness? A. No; I did not.

Q. Did you make any personal inquiry to determine whether he was suffering from a mental ailment at that time?

A. By personal inquiry, would you mean contacting people and all that, or would you go on your own medical observations?

Q. Well, whatever the inquiry would be, Doctor, did you make an inquiry of any kind?

A. I made my observations as to his general behavior in meetings under questioning, things of that sort.

Q. And those observations indicated to you what?

A. That he certainly was not normal in the sense that you would consider a person normal from a nervous or mental standpoint.

Q. Did that have any influence on your action, Dr. Lange, in connection with the matter?

A. No, sir; that wasn't the issue. The issue was the threat in that letter, which in ordinary parlance means blackmail to me.

(Testimony of Alfred Ernest Lange.)

Q. Well, now, Dr. Lange, in connection with your decision, in connection with making up your own mind as to whether a threat was made or not, did the state of Dr. Robinson's mind as you analyzed it have a bearing?

A. Well, it would hardly be—I couldn't conceive of any [1994] other doctor seeing all those things in that letter and going on with this thing.

Q. You couldn't conceive of anybody——

A. That no one in his normal senses would continue in that manner.

* * *

Q. (By Mr. Sembower): Dr. Lange, I am referring to Plaintiff's Exhibit 301, which is the Principles of Medical Ethics of the American Medical Association, and I refer to Chapter II, "The Duties of Physicians to Their Patients, Patience, Delicacy and Secrecy."

"Patience and delicacy should characterize all of the acts of a physician. The confidences concerning individual or domestic life entrusted by a patient to a physician and the defects of disposition or flaws of character observed in patients during medical attendance should be held as a trust and should never be revealed except when imperatively required by the laws of the state. There are occasions, however, when a physician must determine whether or not his duty to society requires him to take definite action to protect a healthy individual from becom-

(Testimony of Alfred Ernest Lange.)

ing infected, because the physician has [1995] knowledge, obtained through the confidences entrusted to him as a physician, of a communicable disease to which the healthy individual is about to be exposed. In such a case, the physician should act as he would desire another to act toward one of his own family under like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.

“Sec. 2. A physician should give timely notice of dangerous manifestations of the disease to the friends of the patient. He should neither exaggerate nor minimize the gravity of the patient’s condition. He should assure himself that the patient or his friends have such knowledge of the patient’s condition as will serve the best interests of the patient and the family.”

I ask you if you have read this section or heard of this section prior to today?

A. I have read that sometime or other. Whether it is that particular issue, whether it has been revised recently or not, but that is in conformity with general medical attitude.

Q. This is the edition dated 1937. Had you, Dr. Lange, read this prior to the hearing on November the 21st, 1950? [1996]

A. When I started practice, I read the rules of the AMA as well as of our state. But they have been revised since then and probably glanced at them at

(Testimony of Alfred Ernest Lange.)

different times, but I couldn't state any definite date; no.

Q. Well, now, did you consider the facts of the Brooks-Robinson matter in the light of these canons of ethics? A. Yes, sir.

Q. That I just read? A. Yes, sir.

Q. Did you know that Tom Brooks had been diagnosed as having syphilis?

A. I did not when it first came up.

Q. You mean at the time of the hearing on the 21st?

A. At the time he made his complaint, I believe he brought up the word at that time for the first time.

Q. Would it have made a difference in your vote at the meeting on November the 21st if you had known that Tom Brooks had syphilis?

A. I don't see why it makes any difference what we had. It was a matter of the threat. That was the important thing to me.

Q. Dr. Lange, were you aware, did you hear in the testimony of Mr. Edwards, the son-in-law of Mr. Brooks, that Dr. Robinson did not disclose the word 'syphilis' to him in connection with this [1997] disease? A. I don't recall that; no.

Q. You don't recall that at all?

A. As I recall it, he did state that he said it.

Q. Do you recall the trustees considering specifically in any of their sessions during which they discussed this matter, these particular canons of ethics, Sections 1 and 2 of Chapter II?

(Testimony of Alfred Ernest Lange.)

A. I don't know that we read that down in detail, but it was so evident to everyone that to use any privileged communication, information, that we as doctors have, to use that as a threat to obtain something from another patient is just about as low as any doctor can get, in my estimation.

Q. Well, now, Dr. Lange, did you at that time know that the fact of whether a threat had or had not been made was on the basis of only the testimony of one man, Tom Brooks?

A. No. There was Tom Brooks, there was Mr. Edwards, and also one other member of the family, I believe was Mrs. Edwards, had listened in on the telephonic conversation.

Q. That is your impression, that there was testimony such as you have just described, weighed heavily with you in that decision?

A. That it was a threat and that he had made those statements; yes.

Q. If it were established that that were not the case, [1998] would that have influenced your vote?

A. If there had been others contradictory right at that time.

Q. Well, Dr. Robinson denied it, did he not?

A. No; he did not.

Q. It was your impression that Dr. Robinson did not deny that he had made a threat?

A. His answer and reply to the statements made at that time was in the effect of the words that when angry, it is hard to say what one would say, that is, that he was sort of irresponsible for saying what

(Testimony of Alfred Ernest Lange.)

he did. But Dr. Robinson did not come out at any time and deny those statements.

Q. Dr. Lange, do you recall Dr. Robinson stating at the hearing on November the 21st, and I am reading from page 28 of the transcript of that hearing:

“As far as this statement that I made any threats, I deny that absolutely. Mr. Brooks has stated, he implied I talked about nothing but this letter. I talked about the fact that I was going to have to give up his case. That is the primary reason that I made telephone calls and caused me to give up the case, and because of giving up their case, I would have to do certain things, report it to the department of health and [1999] report it to Mr. and Mrs. Brooks and the other members of the family.”

Do you recall hearing Dr. Robinson give that testimony?

A. That he made those statements about having to report things in that, yes; but no denial that he had made a threat.

Q. In other words, you just believed——

A. He admitted that he was talking to these patients and that he was stating in those conversations that if Mr. Brooks did not get that letter from Mr. Edwards, that he would feel compelled to report it to state officials, other members of the family.

Q. And that was determinative of your decision?

A. Absolutely. [2000]

NATHANIEL E. BEAVER

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Will you state your full name, please, Dr. Beaver? A. Nathaniel E. Beaver.

Q. And where do you reside?

A. 1125 South Division, Walla Walla.

Q. You are a physician? A. Yes.

Q. Are you a specialist or a general practitioner?

A. General practice.

Q. With whom do you practice, Dr. Beaver?

A. Beg pardon?

Q. With whom do you practice?

A. I am a member of the Walla Walla Clinic.

Q. How many doctors are in that clinic?

A. Five. [2001]

Q. Would you name them, please?

A. Yengling, Brooks, Jamieson, Stottler and myself.

Q. Now, Dr. Beaver, starting with January of 1950 through 1952, what offices, if any, did you hold in the Walla Walla Medical Society?

A. I was vice president beginning in 1951—I think I am correct about that.

Q. I can't hear you too well.

A. I say I was vice president, I believe, beginning in 1951. I had to look it up, I couldn't remember.

(Testimony of Nathaniel E. Beaver.)

Q. As vice president, did you serve on the board of trustees?

A. My name is in the board of trustees' meeting sometime in 1951, I must have.

Q. Well, did you take part in the meetings of the board of trustees in 1951?

A. At one meeting, that one meeting is the only one I have any recollection at all. I may have been at others. If so, it will be in the record.

Q. You were a member of the board of trustees during that year?

A. All officers of the society are members of the board of trustees, as far as I know.

Q. You were elected, I believe, Dr. Beaver, at the annual meeting in December of 1950. Does that refresh your [2002] recollection?

A. It doesn't help me much, but my name is in the record.

Q. You have your elections at the annual meeting, do you not? A. That is correct.

Q. I will give you this, Dr. Beaver, it might help you refresh your memory. I want to cover this just briefly.

A. I looked at it once. It couldn't have been before '51?

Q. I refer you to the minutes of the meeting of the board of trustees on December 21, 1950, as contained in Defendants' Exhibit 447, and you may just keep that book. I will just ask you a few questions.

(Testimony of Nathaniel E. Beaver.)

Examining those minutes, do you find you were present at that meeting?

Mr. Tuttle: What meeting is that?

Mr. McNichols: December 21st meeting of the trustees.

Q. Were you present at that meeting, Dr. Beaver? A. Beg pardon?

Q. Were you present at that meeting?

A. My name is here.

Q. Do you recall being present?

A. I don't, sir.

The Court: What is the date of that meeting, Doctor?

A. It is December 21, 1950.

The Court: Oh. [2003]

Q. (By Mr. McNichols): The annual meeting that year was December 14, 1950, Dr. Beaver. Do you remember that meeting?

A. I don't remember it.

Q. Perhaps you should look at the minutes of the meeting of December 14th and see whether or not that is the meeting in which you were elected vice president. I know it is hard to remember these things.

A. I'm sorry to have such a poor memory.

Q. Well, now, do the minutes of the meeting of December 14, 1950, show you were elected as vice president of the society at that meeting?

A. Yes.

Q. And then turn back to the meeting of December 21, 1950. I believe you said you were present there. A. Yes.

(Testimony of Nathaniel E. Beaver.)

Q. Was the December 21st meeting the first meeting which you attended in your new capacity as vice president? A. It must have been.

Q. And then prior to that time, Dr. Beaver, had you acted in any capacity with respect to the dispute between Dr. Robinson and the society?

A. None that I know of.

Q. Were you familiar with the factual situation and the background of it? [2004]

A. Well, if I had to give you any specific information about it, I couldn't. I suppose I knew what all the rest of the members of the society knew at that time.

Q. You just had general knowledge of it during that period? A. I presume so.

Q. Well, I notice in the meeting of December 21st, there are some entries there with respect to paying the expenses of the society incurred in the Robinson matter, are there not?

Mr. Rosling: Expenses incurred in the preparation of the transcript of the complaint, counsel.

Q. (By Mr. McNichols): Do you find that reference? A. Yes; it is here.

Q. And then will you refer now briefly to the minutes, Dr. Beaver, of January 11, 1951, a special meeting of the board of trustees?

A. January what?

Q. January 11, 1951.

A. January 11 is a regular monthly meeting of the Walla Walla Medical Society.

Q. Well, I think you will find either on the next

(Testimony of Nathaniel E. Beaver.)

page or the page before that a reference to a special meeting of the board of trustees. Here (indicating).

A. Yes.

Q. There is a reference there, is there not, to certain [2005] actions with respect to paying a special assessment for extraordinary legal expenses by the trustees?

A. Will you state that again?

Q. Is there a reference in the business of that meeting?

A. Yes. I was trying to see what this motion was, but that had to do with——

Q. There was an assessment there of \$6.45 against each member in addition to the regular dues? A. That is correct.

Q. Now, Dr. Beaver, you again attended a meeting according to the minutes, of January 25, 1951. Just refer to that very briefly, January 25th.

A. Yes.

Q. And on the same date, there was a meeting of the entire membership of the society. Do you find the minutes of that meeting? A. Yes.

Q. Do you recall at that meeting that rather extensive minutes of previous meetings were read?

A. I don't remember it.

Q. Well, I will read them briefly into the record. Reading from the minutes of the meeting of the society on January 25th, 1951, as contained in Defendants' Exhibit 447:

“The minutes of the meetings of the Board of trustees [2006] held September 26, 1950; October

(Testimony of Nathaniel E. Beaver.)

24, 1950; November 9, 1950; November 28, 1950; December 13, 1950; December 21, 1950, and January 11, 1951; the regular society business meeting of September 26, 1950, the special meeting of November 20, 1950, and the annual meeting of December 14, 1950, were read and approved after correction to show that the society's action approved of the application of membership of Dr. Cranor was actually on a transfer demit."

Do you recall the reading of those minutes now?

A. No.

Q. Were you apprised of the fact that those meetings were the ones that dealt during the past six months with the Robinson matter?

A. If I was, I don't remember it.

Q. Do you recall at that time learning any more of the facts in the background of this situation in this Robinson dispute?

A. Will you repeat that?

Q. Do you recall approximately at that time of obtaining additional information about the facts of the background of the Robinson dispute with the society? A. No. [2007]

Q. Well, then, Dr. Beaver, would you refer now to the minutes of the meeting of the board of trustees held on the 15th of May, 1951? A. Yes.

Q. For your information, that was the meeting, according to the minutes, at which——

A. I looked this up.

Q. You have examined that and have you refreshed your memory?

A. I did just enough to know that I was there.

(Testimony of Nathaniel E. Beaver.)

Q. Dr. Beaver, will you read the last two entries in the minutes of that meeting of May 15th?

A. (Reading):

“Dr. Beaver moved, seconded by Dr. Carlson, that the board of trustees, in accordance with the findings of the state grievance committee, finds Dr. Miles H. Robinson guilty of violating the principles of Chapter II, Section 2, of the current Code of Medical Ethics of the American Medical Association. The motion was carried unanimously.”

Q. That was a motion made by yourself?

A. It must have been.

Q. Would you read the next line, please?

A. (Reading): [2008]

“Dr. Beaver moved, seconded by Dr. Carlson, that in accordance with the recommendations of the state grievance committee, the board of trustees recommends that Dr. Miles H. Robinson be sentenced to a suspension of his membership in the Walla Walla Valley Medical Society for a period of six months. The motion was carried unanimously.”

Q. Now, at that time, Dr. Beaver, did you have any knowledge of the facts of the charges against Dr. Robinson?

A. Well, I am sure I must have.

Q. Well, how did you obtain them, do you know?

A. I must have got them from my attendance at meetings.

Q. Do you recall now receiving any such facts of the background of the matter?

(Testimony of Nathaniel E. Beaver.)

A. I don't recall anything specifically. These things are so far back and they weren't things that I dwelt on a great deal and I simply can't recall anything specific.

Q. I notice at that meeting of May 15, 1951, there was present Dr. Tompkins, Dr. Beaver, Dr. Carlson, Dr. Pratt, Dr. Page and Mr. Fullerton. Do you recall any discussion at that meeting about the facts of the charges against Dr. Robinson?

A. No, sir.

Q. Was there any such discussion held? [2009]

A. This is the meeting that I just read from?

Q. Yes.

A. Well, I am sure there must have been, because——

Q. I notice there was a reference in there——

A. But I don't recall anything specific about it.

Q. Do you recall the recommendations or report, whatever you call it, of the state grievance committee having been read at that meeting?

A. No; I don't.

Q. If it appears in the minutes, I assume it was read, is that correct?

A. It must have been read.

Q. But you don't know where you got your independent knowledge of the facts of the case, of the Robinson case?

A. Well, I could only have gotten them from the various meetings that I attended previous to that.

Q. Now, Dr. Beaver, I will show you briefly Plaintiff's Exhibit No. 104, which purports to be

(Testimony of Nathaniel E. Beaver.)

the decision of the Washington State Grievance Committee in the case of Thomas R. Brooks versus Miles Robinson. Do you recall having seen that document before? A. I do not.

Q. I will ask you whether this particular provision was ever discussed at that meeting of the Board of Trustees on the [2010] 15th of May. Quoting from page 3 of the said Exhibit No. 104:

“On the second count of divulging privileged information, the testimony of Mr. Noel Edwards was definite that Dr. Robinson informed him that Mr. Brooks was suffering from syphilis. This testimony was not refuted and must therefore be accepted.”

Do you recall that particular paragraph being discussed? A. I do not.

Q. How long did that meeting last, do you know, Dr. Beaver? A. I have no idea.

Q. Do you recall who was presiding?

A. No.

Q. Upon what did you act when you made your motion to find Dr. Robinson guilty and also to recommend his suspension from the society?

A. State that again, please.

Q. Upon what were you acting when you made the motion?

A. I presume I was acting on the information we had.

Q. Were you acting just on the recommendations of the state grievance committee?

A. No; I think not. I think on the information

(Testimony of Nathaniel E. Beaver.)

we had and on what we decided, there again I can't remember the specific— [2011]

Q. Had you ever seen any of the witnesses who purportedly testified against Dr. Robinson?

A. Have I ever seen them?

Q. Had you ever seen them prior to that time?

A. I am not sure that I had.

Q. Had you ever heard Dr. Robinson's version of what had occurred in the Brooks matter?

A. Not unless I heard it at a medical meeting.

Q. Did you make any independent investigation of it at all yourself? A. No.

Q. Did you subsequently go to the meeting of May 22nd, 1951? A. Yes.

Q. Did you see Noel Edwards at that meeting?

A. I can't be sure, I believe I did.

Q. Do you know how he happened to be there?

A. No.

Q. Was his possible presence at that meeting discussed at the meeting of May 15th?

A. If it was, I don't remember it. [2012]

* * *

Mr. Sembower: Yes. Your Honor, this deposition relates almost exclusively to damages so I do not propose at this time to read more than a few pages.

The Court: Very well.

Mr. Sembower: I will read the qualification pages and then refer to pages 13 to 16 only.

Reading from the deposition, direct examination by Mr. Sembower:

DEPOSITION OF DR. FRANCIS
MERVIN CAMPBELL

“Q. Will you state your full name, please?

“A. Francis Mervin Campbell.

“Q. What is your address?

“A. East Sound, Orcas Island, Washington.

“Q. Dr. Campbell, you are a medical doctor?

“A. Yes.

“Q. Where did you have your medical training?

“A. The University of Toronto.

“Q. Did that result in a degree, a medical degree?
A. M.D. [2013]

“Q. Where have you practiced medicine?

“A. I practiced in Whitman County, Washington, and Walla Walla, Washington.

“Q. When did you practice in those localities?

“A. 1908 to 1913 in LaCrosse, Washington. That is Whitman County. And in 1913 to 1950 in Walla Walla, Washington.

“Q. During the period when you were practicing medicine in Walla Walla, Washington, where did you have your office located, if you can remember?

“A. Well, first in the Baker Building and then in the Drumheller Building.

“Q. How long were you in the Baker Building, Doctor?
A. Five years.

“Q. And then in the Drumheller Building?

“A. Yes.

“Q. Where was your office in the Drumheller Building?
A. Suite 200.

“Q. Was it at all times in the same place in the

(Deposition of Dr. Francis Mervin Campbell.)

Drumheller Building? A. Yes.

“Q. What was the nature of your practice in Walla [2014] Walla, Washington, Dr. Campbell?”

“A. General practice. That included practice as a physician, also surgeon and obstetrics.”

Now, referring to page 13 of the transcript—

Mr. Rosling: What page did you conclude on, please?

Mr. Sembower: Concluded on page 3 at line 20.

Now, turning to page 13 at line 9:

“Q. Dr. Campbell, while you were practicing in Walla Walla did you belong to the Walla Walla Valley Medical Service Corporation?”

“A. I did.

“Q. Known as the Bureau?”

“A. Yes; I did, during the early period of its existence.

“Q. About how long were you a member of that?”

“A. That I can't tell you. I think probably a year, a year and a half.

“Q. Did you resign from the Bureau?”

“A. Yes; I did.

“Q. Why did you resign from the Bureau?”

“A. Well, in the first place, the practice I had was such a size that I didn't feel compelled to belong to the Bureau. I think in a good many places such a large part of the practice in the vicinity passes through [2015] the hands of the Bureau that a good many of the Doctors, perhaps half of them—it is just a guess—feel that it is an advantage to belong. That advantage didn't—wasn't present in

(Deposition of Dr. Francis Mervin Campbell.)

my case. In the second place, there are certain rules and regulations about the practice in the Bureau, if you are a member of the Bureau, that put you under, shall we say, jurisdiction of the Bureau.

“Q. What advantage, Dr. Campbell, would you say that a doctor might realize from membership in the Bureau?

“A. It is a negative advantage. Where a Bureau has a block of patients—for instance, all the employees of a certain company, and that sort of thing, you are automatically largely barred out from attending those people so contracted for if you don't belong to the Bureau.

“Q. You stated a moment ago that membership in the Bureau in a sense placed a doctor under the control of the Bureau. Could you elaborate on that somewhat?

“A. Yes. In the case of a surgical operation you could examine a patient as carefully as you [2016] liked, as carefully as you could, and you could decide if an operation was necessary, and, yet, it was my understanding that until that patient had been examined by the referee of the Bureau that you couldn't go ahead and do your operation. It interfered with your personal liberty to that extent, and in a small town it is entirely possible that the Referee of the Bureau could be a professional rival. That was not the case in regard to me in Walla Walla; but, yet, there is the potentiality of a biased opinion.

“Q. When you sold your practice to Dr. Robin-

(Deposition of Dr. Francis Mervin Campbell.)

son did you make any suggestions to him as to whether he should join the Bureau or not?

“A. I believe I did suggest to him to join. I am not sure about that. I think I did.

“Q. Why would you suggest to him that he should join the Bureau?

“A. Well, I presume it was because that he was a relatively new man in town and that he perhaps wouldn't have the same indifference to what the Bureau could do for him or against him.

“Q. I don't want to press the point unduly, but [2017] I wondered if you could explain what you meant by what it could do for him or against him?

“A. Well, just this: There was a certain amount of solidarity in the Bureau, and if you didn't belong it could be interpreted as a matter of indifference on your part or hostility, and I think there probably was a certain amount of work that could be referred to you if you belonged, and it wouldn't be if you didn't belong. For instance, if a man who belonged to the Bureau had a case and the question of consultation came up, why he almost necessarily is restricted in his choice of a consultant to other members of the Bureau, things like that.

“Q. You mentioned a moment ago solidarity in the Bureau and hostility if you didn't belong to the Bureau. What did you mean by that, Dr. Campbell?

“A. Well, solidarity. This matter of consultation. Also, the Bureau had meetings at regular intervals, and if you weren't in the position of being able to

(Deposition of Dr. Francis Mervin Campbell.)

be indifferent to any referred work, why, your absence from [2018] those meetings would set you apart from them, and that is not a very good situation.

“Q. What was the relationship in your observation between the Bureau and the Medical Society in Walla Walla?

“A. The big bulk of the members of the Society were also members of the Bureau, and it was my opinion and observation that the Bureau seemed to gradually supplant the Medical Society.”

* * *

NATHANIEL E. BEAVER

having previously been duly sworn, resumed the stand and [2019] testified further as follows:

Direct Examination

(Continued)

By Mr. McNichols:

Q. I have a brief question about the motion which you made at the meeting of the trustees on the 15th of May of 1951, where it states:

“Dr. Beaver moved, seconded by Dr. Carlson, that the board of trustees, in accordance with the findings of the state grievance committee, finds Dr. Miles H. Robinson guilty of violating the principles of Chapter II, Section 2 of the current Code of Medical Ethics of the American Medical Association.”

Are you familiar with Chapter II and Section 2,

(Testimony of Nathaniel E. Beaver.)

of the Ethics of the American Medical Association? Were you familiar with them at the time of this meeting?

A. Well, Chapter II and Section 2 doesn't mean anything to me when I think of it now.

Q. Well, were you familiar with them at the time you made——

A. What did it have to do with? I must have been——

Q. Do you recall specifically having looked into them?

A. I don't recall specifically having looked into them at that time.

Q. Well, here, you may examine them. [2020]

A. Well, all physicians are familiar with that.

Q. What part of that did you feel that Dr. Robinson was violating at the time you made that motion?

A. Well, I—I'm not quite clear as to what you are asking me.

Q. Well, your motion referred, as I recall it, to Chapter II, Section 2, of the Canons of Ethics of the American Medical Association. Are you familiar with what one it was? Your motion says Chapter II, Section 2, and I am showing you Chapter II, Section 2, and ask you what you were referring to there when you recommended that he be found guilty of violating that, or were you acting purely on the recommendations of the state Grievance committee?

A. No, we were acting simply on the recommendation of the state grievance committee and our

(Testimony of Nathaniel E. Beaver.)

own feeling about the matter as it had been carried on up to that time. That is, the motion, I can remember about it. I hate to be so stupid about this.

Q. No, I realize——

A. I mean these weren't things that I dwelt on, what not. I was a member of the board of trustees simply because I happened to be vice president.

Q. Well, did you have any knowledge of the facts at all when you made that motion?

A. I am sure I had knowledge of the [2021] facts.

Q. You still don't know what portion of this Section 2 Dr. Robinson violated, as stated in your motion?

A. Well, I must have had.

Q. Well, it is very short, it is only six, seven or eight lines.

A. Well, the whole thing was that he had threatened to give privileged information.

Q. Well, now, what information did you have about that threat?

A. I had all the information that had come up during the previous meetings, the ones I attended before I became——

Q. Were you in attendance at the meeting in which the complaint was made?

A. No, the board of trustees' meeting, because I wasn't a member of the board of trustees then.

Q. Were you in attendance?

A. But all of this information was accessible to members of the board of trustees at the time I became a member of the board of trustees.

(Testimony of Nathaniel E. Beaver.)

Q. Did you talk to any of the witnesses involved?

A. I don't remember that I did.

Q. Did you say now that you examined these various reports of these hearings, and so on?

A. I presume we went over them at the board of trustees' meeting. [2022]

Q. You don't recall it, however?

A. I don't recall it specifically, no. [2023]

* * *

MILDRED CURTS

called and sworn as witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Mildred Curts.

Q. And what is your address, Miss Curts?

A. 238 Fulton.

Q. Miss Curts, did you take a stenographic report of a statement of Tom Brooks made in the Drumheller Building on October the 11th, 1950?

A. I took a statement of Tom Brooks, I wouldn't give you the exact date at this time without referring to my notes.

Q. I will give you your notebooks in just a moment. I [2024] would like to ask you also if you took a stenographic report of a hearing before the

(Testimony of Mildred Curts.)

board of trustees of the Walla Walla Valley Medical Society on November 21, 1950?

A. I think I did.

Q. And I would like to ask you if you took a stenographic report of a hearing before the grievance committee of the Washington State Medical Association at the Marcus Whitman Hotel on April 22, 1951? A. I did.

Q. Miss Curts, I show you Plaintiff's Exhibits for identification No. 454, 454-A, 454-B, 454-C and ask if you have seen these before?

A. Yes, I have.

Q. And what are those, Miss Curts?

A. Those are my stenographic notebooks.

Q. Are those the notebooks which contain the notes on the meetings which you have just testified about? A. They are.

Mr. Sembower: I ask that Exhibits 454, 454-A, 454-B and 454-C be admitted in evidence.

Mr. Kimball: I have no objection.

The Court: They will be admitted, then.

(Whereupon, the said notebooks were admitted in evidence as Plaintiff's Exhibits 454, 454-A, 454-B, 454-C.) [2025]

Q. I ask you to hold them, Miss Curts.

A. All right.

Q. I am going to ask you to refer to some of your notes, Miss Curts, and read them to us. For the convenience of the Court, I will hand the court transcripts of the two that we will refer to in case

(Testimony of Mildred Curts.)

the Court wishes to refer to them. I have photostatic copies.

Miss Curts, will you please refer to your notes on the Brooks' statement? That was the first one of the three, the one on October 11, 1950. At the bottom of page 1, do you find your notes?

A. Yes, I do.

Q. Will you please read from your notes, beginning with the paragraph—well, yours does not show lines, but beginning with the paragraph "The complaint is this," and so on, and then if you would read there.

A. (Reading):

"My daughter and son-in-law, Mr. and Mrs. Noel Edwards, had a case of overcharge made by Dr. Robinson. They came to this service corporation asking for certain advice and this was an overcharge for the service of a dollar and a half of Dr. Robinson. He had admitted in the performed in the service of my granddaughter, drank some poison one night and they had contacted Dr. [2026] Robinson and he instructed them to take certain action and go to the Crescent Drug to pick up a prescription and they made two trips and there was no prescription. The doctor, on being contacted"—

Q. All right, now, I think that is far enough, Miss Curts. With your notes still before you there, I wish to turn to page 10 of your transcript and, for the purpose of refreshing your recollection, I read to you the testimony which you gave at the

(Testimony of Mildred Curts.)

to nine my son-in-law told him that he—he had parties to get it.”

Q. Is that the close of the paragraph [2029] there? A. (Reading continued):

“And that announced to him the whole family had syphilis.”

That is down to where Mr. Kimball starts questioning.

Q. Yes. Now, do you find there, Miss Curts, any notes other than what you have read between where you stopped reading and the questions by Mr. Kimball? A. No, sir.

Q. And now, Miss Curts, will you please refer to your notes for the November 21st hearing, 1950, in Dr. Ralston's office at 8 p.m. in the evening? That is the meeting of the trustees. Do you find that? A. Yes.

Q. Page 29, top of the page, and I think that it starts out—

The Court: What page is that? Twenty-nine?

Mr. Sembower: Page 29 of the trustees hearing.

The Court: All right.

Q. (By Mr. Sembower): And I believe it starts out, “And caused me to give up the case.” Do you find that? A. Yes.

Q. Will you please start reading there at that point? A. (Reading):

“And caused me to give up the case. I would have to do certain things, report to the department of health and—give [2030] it to Mr. and Mrs.—give up Mr. and Mrs. Brooks and the family. I never

(Testimony of Mildred Curts.)

told Mr. Edwards over the phone or any other time that his father-in-law or mother-in-law had syphilis, but I did say there was a 'disease in your father-in-law which is serious and has a serious consequence to them, because your father-in-law was not taking treatment and might by that that the children might have it.' "

Q. All right, now, if you will just continue right there for a few more lines.

A. (Reading continued):

"Mr. Edwards: I will concede to that statement of Dr. Robinson.

"Dr. Robinson: A number of minor points in here. Mr. Brooks said I didn't discuss this matter of the complaint to the grievance committee, but told me over the phone it was talked over in the family."

Q. Now, I think that is far enough, Miss Curts. Just before Dr. Robinson speaks, between Mr. Edwards' statement, "I will concede that statement of Dr. Robinson" and Dr. Robinson speaks, do you find any notes in your book?

A. I do not. [2031]

Q. Now, Miss Curts, I will ask you to turn to page 49 of the same transcript. It is down at the bottom of the page there, starting out: "Mr. Lepiane: I watched my wife suffer quite a bit mentally through learning of this going on." Do you find that? Do you find that passage?

A. Yes.

Q. All right, now, will you please read beginning

(Testimony of Mildred Curts.)

Q. And now, Miss Curts, I find in your deposition, question by Mr. Sembower:

“Q. All right, if you then would continue, Miss Curts.

“A. That is Mr.—I have been brought into court and I watched my wife suffer quite a bit mentally through learning of this going on.

“Dr. Robinson: I didn’t tell them, but Mr. Edwards knew what I was talking about. He jumped the gun, that was all right. I had responsibility to make sure the other members of the family didn’t have syphilis.” [2034]

Now I will show you, Miss Curts, the transcript of your deposition. A. Yes, sir.

Q. And ask you to compare it with your notes. What is your—

A. Well, as I say, your “I” and “He” are practically the same symbols. One is just a little smaller than the other and I read it “I” now and I think that is the way I read it in the deposition more than likely.

Q. Well, now, at the time, however, that you gave your deposition, you said that it was “He.”

A. Well, I more than likely did. I may have. Well, it looks like “I” in here now. To me, I would say that it was “I” in this.

Q. Would you say that you can be confused over the “I” and the “He”?

A. It is very easy to be done when you are writing shorthand notes.

Q. It is an important distinction.

(Testimony of Mildred Curts.)

A. I know it.

Q. Whether it is "I" or "He," and for that reason I will ask you, is it true that your notes, however, do not point that out very clearly, that distinction, so you might read it one way at one time and another way another time? [2035]

A. Well, you could very easily because of your symbols in that if you're writing hastily, but I would say it was "I" in these notes now. I didn't have my notes, of course, when I read over that deposition to compare them with my notes.

Q. But you did have your notes at the time you gave the deposition?

A. At the time I gave the deposition, yes.

Q. In front of you at that time? A. Yes.

Q. Now, Miss Curts, on the Brooks statement, it says: "Miss Curts can go over her notes and you go over it very carefully and make any changes."

I will ask you, did Tom Brooks correct your first copy according to those instructions?

A. He did.

Q. Did you retype the transcript, including the changes made by Mr. Brooks? A. I did.

Q. When did you do that, if you recall?

A. I couldn't tell you that. I don't remember when they were written up in the first place, but they were given to Mr. Brooks to correct.

Mr. Sembower: May I borrow the exhibit?

The Court: Surely. [2036]

Q. (By Mr. Sembower): I will hand you, Miss Curts, the Plaintiff's Exhibit No. 18, the so-called

(Testimony of Mildred Curts.)

Mr. Sembower: That is all.

The Court: Any questions?

Cross-Examination

By Mr. Kimball:

Q. Miss Curts, at the time of your doing this work in the fall of 1950 and the spring and summer of 1951, what position did you hold?

A. I was official court reporter for the Superior Court for Judge Bean.

Q. Was there any other court reporter for that court? A. Not at that time.

Q. How long have you held the position of official court reporter for Walla Walla County?

A. Up to that time?

Q. Yes, ma'am.

A. It would be about nine years. [2039]

Q. Miss Curts, how long has it been since you have actively engaged in transcribing or reading shorthand? A. About three years.

Q. You have been in a different line of work entirely? A. Yes.

Q. I will ask you, Miss Curts, in transcribing shorthand notes, is it not only a combination of the actual symbols that you write, plus your memory as attached to those symbols, that goes into the transcribing? A. It certainly does.

Q. And I ask you further, regarding the meeting of November the 21st, 1950, in Dr. Ralston's office, was that a fast-moving meeting with much conversation and talk going on?

(Testimony of Mildred Curts.)

A. It was a very informal meeting and there may have been four or five people talking at one time. It wasn't conducted like a court hearing, you know, because it was very informal, and while they tried to keep it——

Q. Miss Curts, were you ever approached by any doctor in Walla Walla or myself regarding what you should put in your transcription of these notes?

A. Never.

Q. At the time you made these transcriptions from your notes, were they a true and correct report of the hearings held as far as you could then conduct your reporting? [2040]

A. They were.

Mr. Kimball: That is all.

Redirect Examination

By Mr. Sembower:

Q. Miss Curts, when did you retire as court reporter? A. In '53.

Q. Now, you mentioned that at the hearing in Dr. Ralston's office, there was a great deal of confusion and a great deal of talking. Did you mean to say it was difficult for you to get the transcript, an accurate transcript?

A. Well, not—they had conversations in between the hearings to clear up things. The doctors talked among themselves and possibly some of the other people were talking and—but as far as the main part of the meeting, I think that that was conducted when Dr. Robinson or Mr. Brooks were talking or

ARTHUR YENGLING

a defendant herein, was called and sworn as an adverse witness [2043] by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Arthur A. Yengling.

Q. What is your address, Dr. Yengling?

A. Bryant Avenue, Walla Walla, Washington.

Q. That is your home address? A. Yes.

Q. What is your office address?

A. 55 Tieton Street.

Q. And what is your profession?

A. Physician.

Q. Do you practice any specialties in the profession? A. Yes, general surgery.

Q. Dr. Yengling, what have been your official connections first with the Walla Walla Valley Medical Society since 1949?

A. I was on the grievance committee when it was formed.

Q. That was in 1950, I believe?

A. In 1950. That is my only official connection other than a member.

Q. How long have you been a member of the society or its predecessor group?

A. That has been since 1936. [2044]

Q. Have you served on the board of trustees?

A. No.

(Testimony of Arthur Yengling.)

Q. Now, in the state association, what official positions, if any, have you held with that association?

A. I was a member of the board of trustees of the state medical society in 1949 or '50.

Q. And I believe you were also a member of the grievance committee?

A. Of the state grievance committee.

Q. What was the term of office for that post?

A. I am still a member of the state grievance committee.

Q. Have you held any offices with the American Medical Association? A. No, sir.

Q. You are a member of the bureau, are you not?

A. Yes.

Q. When did you first become a member of the bureau? A. About 1937.

Q. And have you held any official positions in connection with it?

A. Yes, I have been president of the bureau and on the board of trustees.

Q. When were those positions held?

A. Oh, I was president about three years ago and on the board of trustees following that, or before that, I was [2045] on the board of trustees before my year of presidency, which was two years ago, not three.

Q. Dr. Yengling, what would you estimate is the approximate proportion of your income which is derived from bureau cases?

(Testimony of Arthur Yengling.)

A. Now, that is hard to do, but I imagine around 5 per cent, probably.

Q. When were you appointed to the local society grievance committee?

A. When it was first formed.

Q. That was about in April, 1950, would you say?

A. Well, I don't remember the date, but 1950.

Q. And who discussed your appointment to that group with you in advance?

A. Nobody discussed that. I was appointed by Dr. Page, who was then president of the medical society.

Q. Do you remember about when he discussed that with you?

A. Well, he called me on the telephone, if I am not mistaken, and told me I was appointed on the committee.

Q. Did he tell you what committee it was?

A. Yes, the grievance committee.

Q. And did he say who else was going to be on the grievance committee? A. No.

Q. Did he say who would be chairman of the committee? [2046]

A. Well, that committee was just being formed at that time and I can't remember that he told me who the other members were at all on the committee.

Q. When did you find out who the other members were?

A. I found out when Dr. Stevens called me and said he was chairman of the committee and we had some cases to come up.

(Testimony of Arthur Yengling.)

Q. When was that, about?

A. I don't remember the dates. It was probably in September of '50, I think, around there.

Q. Did he at that time tell you who the other members of the committee were? A. Yes.

Q. Who were they?

A. Well, Dr. Bohlman was the only other member.

Q. Did Dr. Lyman have any connection with the committee?

A. Well, I didn't know Dr. Lyman was on the committee when we had our first meeting or had anything to do with it.

Q. When did you have your first meeting?

A. In September, I think, 1950.

Q. And where did that take place? Also when, if you recall?

A. That took place—Dr. Stevens called me up and said we had some business for the grievance committee and he wanted to talk it over with me, and I was over at Dr. Brooks' home at the time and he said he would come [2047] over and we would go over the things, and he did.

Q. Is that Dr. Peter Brooks? A. Yes.

Q. And you met over at Dr. Peter Brooks' home?

A. That's right, but he had nothing to do with our meeting. It was a very informal meeting. We discussed these problems at Dr. Brooks' home.

Q. Dr. Bohlman was not there, was he?

A. No.

(Testimony of Arthur Yengling.)

Q. Was an effort made to get in touch with him and ask him to come, if you know?

A. Well, I don't know. I wasn't the chairman of the committee and that wasn't discussed.

Q. And at this time, you didn't know Dr. Lyman even had any connection with the committee?

A. No, sir.

Q. I believe you stated that there was more than one case at this time. How many cases were there?

A. Well, we had three, we had three problems, three cases, that first meeting.

Q. We have never been able to find any records of those cases, Dr. Yengling, other than Dr. Robinson's. Do you know where those records might be?

A. No. As far as I know, we had no record, unless Dr. Stevens kept a record of it, because the two cases that [2048] we had were two doctors, were very easily arbitrated and straightened out, and Dr. Robinson's case wasn't so easy. But I don't know of any written record of that meeting.

Q. Did this meeting at Dr. Peter Brooks' home, to your recollection, occur between the complaint of Mrs. Edwards, which I believe was taken by Mr. Fullerton on August the 29th, and October the 23rd, when I believe Dr. Stevens accosted Dr. Robinson on the street and introduced himself as chairman of the grievance committee?

Mr. Kimball: Pardon me, did you say October 23rd?

Mr. Sembower: September 23rd, I'm sorry.

Q. Did it occur, to your recollection, between

(Testimony of Arthur Yengling.)

those two dates, August 29, '50, and September 23, 1950?

A. I think so, yes.

Q. Under what rules at this time was the committee operating, Dr. Yengling?

A. Well, we were operating under the best regulations we could find. Grievance committees were just being started and at that time we had information from the various medical journals on how they should be set up, and Dr. Stevens had been quite interested in this and was collecting material from other medical societies on how their committees were set up, and we had no written rules to follow at the time except that the medical society, as I remember it, had authorized a grievance committee be [2049] set up and function.

Q. I believe in your deposition on January the 20th, a question was put to you:

“And you and Dr. Stevens were operating on your own interpretation of what you should do.” And you said: “Not on our own interpretation. We had numerous correspondence of various types of procedure for grievance committees from all over the country. There had been various examples that had been published in the AMA of procedure. I think they had been published in Northwest Medicine, and Dr. Stevens was collecting information on how to operate a grievance committee over a period of quite a few months. We discussed that material.”

I just wondered, do you recall what your discussions of that material involved?

A. Well, we were trying to get together definite

(Testimony of Arthur Yengling.)

rules and regulations for our grievance committee and rules that would be accepted by the medical society. They had authorized a grievance committee and with power to act as a grievance committee without a set of rules for us, and we were trying to get a set of rules together to be authorized by the society, which was eventually done, but I don't believe they were any more than in a nebulous stage when we had our first three cases.

Q. Was there any precedent that you know of, Dr. Yengling, [2050] for a secret grievance committee? A. None that I know of.

Q. Now, at the meeting of the society held on September the 26th, Dr. Robinson attacked the grievance committee, did he not?

A. I don't remember whether I was present at that meeting. I think I was not. September 26th? I might have been.

Q. I find in the minutes, Dr. Yengling, that those present included Carlson, Keyes, Lange, Lyman, Page, Pratt, Stevens, Tompkins, Yengling, Ralston, and Robinson.

Mr. Rosling: Are you reading September 26th?

Mr. Sembower: Yes, I am reading September 26th.

A. That sounds like the board of trustees.

Mr. Rosling: There are a great many others.

Mr. Sembower: These are the defendants.

Q. Do you remember any discussion?

A. I can't remember what went on at that meeting. What are you referring to?

(Testimony of Arthur Yengling.)

Q. I wanted to ask you if you remembered. Of course, you have no recollection of the discussion pro and con of the grievance committee at all at that meeting?

A. Well, I don't know whether it was that meeting or not, but there was a discussion about the grievance committee when we decided to form a grievance committee, a lot of discussion, and that is when the idea of the secret [2051] grievance committee was decided on, at one of those meetings, I don't know which one, and the reason for that was not anything secret other than that the committee be kept secret from the public so that the public wouldn't annoy the doctors on the committee. There was no other reason for secrecy than that.

Q. Had any announcement been made to the membership of the constituency of the secret committee that you know of?

A. I didn't get that question.

Q. Had any announcement been made to the membership of the constituency of the secret committee that you know of?

A. Well, the membership voted on whether they would have it secret or not. I was present at that meeting when there was considerable discussion about whether to have it secret or not and it finally was passed, I think, by the members present. I remember a meeting when we passed it, to have it secret. I was opposed to it being secret, personally.

Q. Now, at this meeting on the 26th, I find a

(Testimony of Arthur Yengling.)

minute entry, the last item on the agenda, which states that:

“The grievance committee was discussed by Stevens, Keyes, Carlson, Tompkins and Robinson.”

Does that refresh your recollection at all?

A. No, I don't remember what they said.

Q. I don't want to keep you in the dark. Here is the [2052] minute book, I show you the last entry here: “A discussion was held on the operations of the grievance committee.”

A. Well, that doesn't mean much to me.

Q. It doesn't recall anything to your mind?

A. No, no.

Q. Did you know at this time that Dr. Robinson was criticizing the grievance committee?

A. No, I don't believe so. I don't remember that.

Q. Do you remember when the letter went out to the Edwards on the complaint which Mrs. Edwards had given to Mr. Fullerton about Dr. Robinson?

A. Yes, I remember that.

Q. When was that, about?

A. Well, after our meeting of the grievance committee, Dr. Stevens and I decided that these complaints were of a quite minor nature and the thing for us to do was to try and solve them amicably, and Dr. Stevens, as chairman of our committee, was to talk to the doctors and get these complaints straightened out, and I think Dr. Stevens talked to Dr. Moore and Dr. Carlson about their complaints and, with very little difficulty, straightened them right out and they were dropped.

(Testimony of Arthur Yengling.)

And Dr. Stevens told me one day that he had talked to Dr. Robinson and Dr. Robinson wouldn't acquiesce at [2053] all and that he didn't want to talk to him and told him that our grievance committee had no authority to act on his complaint, which we felt it did.

And then after that discussion with Dr. Robinson, we had another meeting and Dr. Stevens talked to me about trying to settle this thing, and he wrote the letter and we discussed what was going to be in this letter. And previously at our grievance committee, one of the cases, I think, against Dr. Carlson was a bill, whether there was a mistake, and I think in that particular case we justified Dr. Carlson's bill and told the individual that the bill was satisfactory and they should pay it in full, and I think which they did. There was just a misunderstanding over it and we upheld that particular one as a committee trying to have good public relations, and our letter to Dr. Robinson, we thought we were trying to do a kindness to Dr. Robinson and this family, too, when we said that we thought this dollar and a half fee could be ignored.

Q. Well——

A. I mean, we had to settle it one way or the other.

Q. Did your committee or the society have any precedent for writing directly to a patient and telling him not to pay a member doctor of the society?

A. No, the society gave us no authority for that, but we [2054] were given authority as a grievance

(Testimony of Arthur Yengling.)

committee to act as a grievance committee, and we thought that that was certainly within reason to arbitrate a dollar and a half fee, and I would rather have paid it out of my pocket than to try and straighten it out. It would be much easier with somebody who didn't arbitrate like Dr. Robinson.

Q. Dr. Yengling, did it make a difference in the deliberations of you and Dr. Stevens that this was only a dollar and a half? Did the amount make a difference?

A. No, no, it was a misunderstanding on a patient's part. The patient wasn't even complaining about it, actually, the patient wanted information about this dollar and a half fee. I think the information we had, they wanted to know why they were charged a dollar and a half for a telephone call. They didn't think telephone calls were charged in this town, and it actually is true that, as far as I know, nobody charges for telephone calls.

Q. Well, now, your only information personally, Dr. Yengling, about Dr. Stevens' contract with Dr. Robinson was entirely Dr. Stevens' statement to you, is that correct? A. That's right.

Q. Did he tell you that he had talked to Dr. Robinson on the street? [2055]

A. He told me that he talked to Dr. Robinson on the street informally about this little misunderstanding, and that Dr. Robinson got haughty about it and wouldn't settle.

Q. Did he tell you that he had had to tell Dr.

(Testimony of Arthur Yengling.)

Robinson that he was on the grievance committee, or chairman of the grievance committee?

A. Oh, I think that's right, I think he told Dr. Robinson he was on the grievance committee. After the first cases we had, there was no secrecy as far as the grievance committee was concerned with the doctors. As soon as we had a case, I think the doctors would know about that right away.

Q. But up to this time, you don't have any knowledge that Dr. Robinson knew who the members of the grievance committee were?

A. No, I am sure he didn't, because I didn't know I was on it until we had a case come up, until Dr. Page called me a short time before that, and we hadn't aired anything about the grievance committee.

Q. Did you make any personal investigation about this complaint? A. No.

Q. Did you talk to Mrs. Edwards?

A. No, no. [2056]

Q. Did you have any information that she had complained directly to Dr. Robinson about it?

A. Well, I don't think we had at the time of the meeting any information on that. Dr. Stevens was to find out those things as the chairman when he talked to Dr. Robinson. I had no information on Dr. Robinson's contact with the Edwards other than they wanted this dollar and a half fee straightened out and they wanted to know whether they should pay or whether they shouldn't, it was my recollection.

(Testimony of Arthur Yengling.)

Q. Now, Dr. Yengling, I believe that you attended a meeting at which a statement was taken from Mr. Tom Brooks?

A. Yes, I remember that.

Q. Complaining against Dr. Robinson. You remember that meeting? A. I do.

Q. Who gave you notice of that meeting?

A. Well, I think the president of the medical society notified me of that meeting.

Q. Dr. Page? A. I think so.

Q. Did he tell you what kind of a meeting it was when he invited you to come?

A. No. He said there was some very serious business to bring up at that time and he wanted the grievance [2057] committee at this meeting, and I didn't know ahead of that meeting what the business was.

Q. You were a member of the grievance committee, did it strike you at that time as strange that that would not be referred first to the grievance committee and acted upon by it?

A. No, I think at the meeting Dr. Page said that he got this information before the grievance committee and he considered this information and the charges so serious that he referred it directly to the board of trustees and not to the grievance committee.

Q. Dr. Page said that?

A. I think that is what he said to me.

Q. Did he tell you why he regarded it as so serious?

A. Yes, because of it being blackmail and a threat.

(Testimony of Arthur Yengling.)

Q. You mean the nature of the charges?

A. That's right. The charge was very serious against the doctor and he didn't want that to come before the grievance committee. It was a committee to settle only minor complaints and little disputes over bills and straighten out public relations.

Q. Did you know at this time that the Brooks complaint had any relationship to the Edwards complaint which you had been working on?

A. Well, I didn't know it until I got to the meeting. [2058]

Q. Did you soon discover that there was a relationship between the two?

A. Yes, we were told that before Mr. Brooks gave his story to us and before the Edwards presented their side of the story. I mean he briefed us on why we were there, as well as I can remember.

Q. Who briefed you on that?

A. I think Dr. Page did that.

Q. Did he tell you at that time that there had been any additional contacts with Mr. Brooks other than the phone call from him to Mr. Fullerton?

A. No, I don't think he told us anything. He said this matter was of a serious nature and we were there to hear it and that is what the meeting was called for. He didn't give us any of the details at all.

Q. Now, at the hearing you said the Edwards' side of the case was presented. Wasn't it a fact that only Mr. Brooks appeared before that meeting?

A. That may have been right.

Q. In other words, it was just a matter of taking

(Testimony of Arthur Yengling.)

Mr. Brooks' word or Dr. Robinson's word at this point?

A. Well, I think that's right. But Mr. Brooks seemed to be very honest in his presentation of the facts. He seemed very sincere.

Q. Did you have any conversations with Dr. Peter Brooks [2059] about Mr. Tom Brooks?

A. No.

Q. Did you ever learn from Dr. Peter Brooks that he had confirmed the diagnosis of syphilis which had been made by Dr. Robinson?

A. No. Dr. Brooks was quite confidential about that information. As a matter of fact, I am in the same office with him and I never knew about it.

Q. How well do you know Tom Brooks?

A. I never had any personal contact with him.

Q. Dr. Yengling, was he not at one time a patient of yours? A. Tom Brooks?

Q. Yes. A. No, sir. No, sir.

Q. How well did you know Dr. Miles Robinson at this time, Dr. Yengling?

A. Oh, fairly well. Our offices were close together in the building.

Q. Had you known him socially at all?

A. No.

Q. Had you worked with him closely in professional connections?

A. We had done some work together.

Q. And were you acquainted with him in the activities of [2060] the bureau and the society?

A. Yes.

(Testimony of Arthur Yengling.)

Q. Were you aware, Dr. Yengling, of the letter which Dr. Robinson had written under date of August 11, 1950, in which he had rather extensively criticized the bureau? A. Yes.

Q. When did that letter first come to your attention, if you recall?

A. Oh, I don't know when, but I remember the letter, well, probably more than one letter, of his criticism of the bureau, but that didn't impress me much one way or the other. That was his business and none of mine and he can do what he wanted to as far as I was concerned. I mean, the bureau was having some difficulty anyhow about that time and there was some question whether we would continue the medical bureau.

Q. What was the difficulty the bureau was having at that time?

A. Well, we had financial difficulties. I mean, running a medical bureau is not easy and we had financial troubles and there was some question in a good many of the doctors' minds whether we would continue a bureau or whether we would actually stop having a medical bureau.

Q. Do I gather from you that Dr. Robinson's letter reached a receptive audience among the [2061] doctors?

A. No, I don't believe so. I think most of the doctors were in favor of having a medical bureau. It covered a certain type of medical practice and we realized that medical practice in the country is being covered more and more on a prepaid basis

(Testimony of Arthur Yengling.)

and we had to do everything we could to make the bureau survive.

And we have done that very nicely at the present time, pulled our bureau out of the difficulties.

Q. Well, did the doctors who belonged to the bureau feel that Dr. Robinson's criticisms of it were constructive?

A. No, I don't believe so. I think there were too much of Dr. Robinson's ideas, I mean more than general constructive ideas. I mean, he was extremely critical of the bureau, rather than to give constructive criticism. He was criticizing the bureau, and, I think, threatening to resign from the bureau about the same time and that wasn't a good thing. Either resign or he had to stay on with it and make it operate.

Q. In fact, he did resign, didn't he?

A. Yes.

Q. You say that wasn't a good thing; what did you mean by that, what are you referring to? You said that he was going to resign from the bureau and that was not a good thing?

A. No, I didn't say that. I said his criticisms were not [2063] good.

Q. Oh. In your opinion, Dr. Yengling, had Dr. Robinson harmed himself by his criticisms of the bureau?

A. Oh, I don't believe so. I mean, I think you can practice medicine belonging to the bureau or not belonging to the bureau. I think that is perfectly possible. Dr. Campbell did it for years and

(Testimony of Arthur Yengling.)

he had a large practice and he didn't want to fiddle with the bureau. There was extra bookkeeping to belonging to the bureau, and as the years have gone on in medical practice, you had to have more and more stenographic help, and we are pretty well used to bureaus now and prepaid medical coverage. You just add more stenographers in your office to take care of that type of practice.

Q. Well, now, Dr. Yengling, you received a copy, did you not, of Dr. Robinson's complaint against the grievance committee made November the 7th or thereabouts?

A. Well, I received it, but I was out of town at that time.

Q. When did it first come to your attention, if you recall?

A. Well, I was out of town from around the middle of October until the first part of January that year, so I didn't get that. I wasn't very active in anything for a period of months.

Q. Well, then, Dr. Yengling, however, you had returned and you did attend the state grievance committee meeting [2064] which was held on the 22nd of April, 1951, did you not?

A. I was there for part of it, part of that meeting.

Q. How active a part would you say that you took in those proceedings?

A. Well, Dr. Berge on the state grievance committee told me that I was disqualified as an active member due to the fact that I was a member of the

(Testimony of Arthur Yengling.)

local county medical society here where Dr. Robinson was also a member, and he said that I could sit in on the hearing if I wanted to and I was there part of the time.

Q. Did you feel, Dr. Yengling, that you had been accused by Dr. Robinson in his complaint against the local society grievance committee?

A. That I had been accused?

Q. Yes. A. Of what?

Q. Well, I just wondered. Dr. Berge had said that since you were a member of the local society and implied that you were an interested party, I wondered if you felt if you had been accused of any wrongdoing by Dr. Robinson in connection with the grievance committee?

A. No. I mean, I was simply disqualified because I was a member of the component society and he wanted to have an impartial hearing. He might think that I might have certain prejudice and he wanted no prejudice at the [2065] meeting.

Q. On page 3 of the transcript of the state grievance committee on April the 22nd, I find the statement by you:

“May I present Dr. Stevens, a past president of the society and chairman of the grievance committee last year; Dr. Keyes, the present secretary; Dr. Tompkins, the present president.”

Was Dr. Stevens, in fact, a past president of the local society, if you know?

A. I can't remember.

Q. I believe he was a past president of the

(Testimony of Arthur Yengling.)

bureau, is that not correct? A. I think so.

Q. Now the reference, "also the chairman of the grievance committee last year." Had Dr. Stevens' activities in connection with the grievance committee terminated?

A. I don't know when the grievance committee was terminated.

Q. And now, Dr. Yengling, although you were not planning to take active part, by your testimony, in the meeting, isn't it a fact that you did volunteer and tell the state grievance committee that Dr. Robinson's move against the local society's grievance committee had no support whatsoever?

A. I don't know what you have on that deposition there. [2066]

Q. Well, I will be glad to show it to you. I am referring, Dr. Yengling, to page 48 of the transcript of the state grievance committee hearing. I believe the transcript shows that the chairman said: "Is there anything anyone wishes to bring up?" and you stated:

"There was a large group of men there and before the entire medical society Dr. Robinson got up and gave a long discussion and he read a long letter and there was 100 per cent against Dr. Robinson. After that last meeting, it was seen it was obvious we could not go on."

And then Dr. Page said:

"What that is here and what it was about, it was a special meeting that Dr. Robinson brought up these matters."

(Testimony of Arthur Yengling.)

Do you recall making that statement at the hearing?

A. Well, I don't know exactly what that all refers to.

Q. And, now, it refers there specifically, I believe, Dr. Yengling, to pages——

A. You are jumping right into the middle of something and I don't just know what, "We could obviously not go on," I don't know what that refers to.

Q. That refers to pages 12 and 13 of the exhibit which had [2067] been submitted by the local society to the state grievance committee called: "Chronological history of events leading up to the complaints of Mrs. Noel Edwards and Mr. Thomas R. Brooks to the grievance committee, Washington State Medical Association." It is Plaintiff's Exhibit 78 and this appears to be the minutes of the meeting of November 20, 1950, of the local society.

A. Yes, but I wasn't present at that meeting.

Q. No, and that is why I was asking you about your statement to the state grievance committee that Dr. Robinson had read a long letter and there was 100 per cent against Dr. Robinson.

A. Well, I think this is referring to something else than that, because I was never at this meeting and, as far as——

Q. Well, to what do you think it could refer?

A. Well, as far as I am concerned, there was practically 100 per cent against Dr. Robinson and his activities on the grievance committee. I mean,

(Testimony of Arthur Yengling.)

I didn't know of anybody who was for him on that particular thing. I mean, that is an honest statement.

Q. Well, now, Dr. Rownd identified it, did he not, in the very next statement there? When you make this statement about the 100 per cent, he says: "That is pages 12 and 13," which refers to, of course, this chronology, which could only convey to the members of the state grievance [2068] committee anything except that it referred to the special meeting of the grievance committee—I mean of the society—on November 20th.

A. Well, I can't remember that.

Q. And now, you were not at that meeting, Dr. Yengling, but had not somebody told you that the vote there on Dr. Robinson's proposition to abolish the grievance committee had been only 15 to 14 against it?

A. No, I don't know that.

Q. You didn't know that at the time you made this statement to the state grievance committee?

A. No, I don't believe so.

Q. If you had known it, would you have made that statement?

A. Well, I wouldn't have made that statement, no.

Q. Well, then, Dr. Yengling, would you say that in view of that, that you gave the state grievance committee a fair impression of the support Dr. Robinson had in fact on the issue of the local grievance committee?

(Testimony of Arthur Yengling.)

A. Well, I didn't have very much to say there one way or the other.

Q. Now, then, you said, "After that last meeting, it was seen it was obvious we could not go on." To what did you refer there?

A. I don't know.

Q. You stated on page 51 of this [2069] transcript:

"Throughout this entire episode, every member of the medical society have tried personally to cease and desist from saying anything. Finally, I went to his close personal friend, Dr. Wallace Pratt, and had a long talk with him and he wouldn't arbitrate and he tried to get him to settle and he wouldn't arbitrate in any way whatever."

When and where, Dr. Yengling, did you have this conversation with Dr. Pratt?

A. Well, my office was quite close to Dr. Pratt, I used to see him quite frequently. He was right next to Dr.—he was between Dr. Robinson and our office.

Q. You did have a discussion with Dr. Pratt about this matter, is that correct?

A. Yes, I have talked to Dr. Pratt.

Q. What did that cover, the whole Robinson matter or the specific grievances or his attitude toward the grievance committee or what was it?

A. Well, his attitude in general toward the medical bureau, the grievance committee, and arbitration in general. I mean——

Q. Well, now, did Dr. Pratt state to you that he

(Testimony of Arthur Yengling.)

would attempt to arbitrate the matter with Dr. Robinson?

A. Well, we had a serious charge against Dr. Robinson and [2070] he wasn't co-operating with us. I mean, we were having difficulty with him and we were trying to be reasonable and Dr. Pratt was his closest friend, so far as we knew, and we wanted to settle this matter peacefully, if possible.

Q. On what basis did you arrive at the conclusion that Dr. Pratt was his closest friend?

A. Well, because he and Dr. Campbell were good friends, the closest friends, and Dr. Robinson came in with Dr. Campbell and met Dr. Pratt immediately, and I think they were social friends, as well as professional colleagues.

Q. On what did you base that? On your own personal knowledge, that they were social friends?

A. Well, I think my personal knowledge, yes. I mean, I would see them talking together and discussing things, I think they were friends. That is my impression.

Q. Well, now, did Dr. Pratt state to you that he would then get in touch with Dr. Robinson and attempt to arbitrate the matter?

A. Well, he said he would talk to Dr. Robinson, yes.

Q. By what authority, Dr. Yengling, did you talk to Dr. Pratt about the matter?

A. As a personal friend.

Q. You, however, were a member of the griev-

(Testimony of Arthur Yengling.)

ance committee, [2071] also, were you not, both the state and local grievance committee?

A. Yes, but that was long after the original grievance committee action.

Q. Did Dr. Pratt report back to you, so to speak, after a conversation with Dr. Robinson?

A. I think so.

Q. Do you remember what he said?

A. Yes, I think he said he couldn't get very far with Dr. Robinson.

Q. Is that the whole substance of it?

A. Well, he said very little else than that.

Q. Did you yourself contact Dr. Robinson with reference to arbitration? A. No, I never did.

Q. You do know, do you not, that Dr. Pratt wrote a letter to Dr. Robinson's father?

A. Yes.

Q. Do you know the date of that?

A. No, I don't know the date of it.

Q. Would the date of May 24, 1951, seem plausible to you, or reasonable?

A. I can't remember the date of that.

Q. Did he write this letter before or after Dr. Robinson was expelled? [2072]

A. Oh, before, I think.

Q. And now, the expulsion meeting was held on May 22, 1951, was it not?

A. I don't remember the date of it.

Q. Would there have been any point in Dr. Pratt getting in touch with Dr. Robinson's father after the expulsion?

(Testimony of Arthur Yengling.)

A. No, it was before his expulsion.

Q. I have a transcript here of Dr. Pratt's deposition in which a question was presented to him:

"Now, Dr. Pratt, after you talked with Dr. Robinson, did you then report back to Dr. Yengling?"

He answered:

"No, I don't think I did."

But your recollection is that Dr. Pratt did talk to you, make a report to you?

A. Not a formal report back to me. I had no standing on any committee. That was just personal interest in trying to help Dr. Robinson. I was as interested in that, I felt very sorry for Dr. Robinson. I mean, we thought he was mentally unbalanced and having delusions of persecution and if we, as doctors, could befriend him, we would try, and I talked to Dr. Pratt about that because Dr. Pratt was his close friend and I am sure he told me that he didn't get anywhere with Dr. Robinson. [2073]

Q. You stated, Dr. Yengling, that Dr. Robinson was not co-operating with the committee and its efforts on the Brooks complaint?

A. He certainly was not, no. No, he certainly was not co-operating.

Q. What did you have in mind in the way of co-operation?

A. Well, his original small charge of a dollar and a half fee that we were trying to arbitrate with Dr. Robinson, it seems to me within reason any doctor with the education and background and training of Dr. Robinson would have forgotten the matter

(Testimony of Arthur Yengling.)

when Dr. Stevens talked to him. The other doctors straightened out their difficulties and we have these things continuously, these little picayunish things like that in medical practice, and we have to give and take.

Q. You are referring to your own practice now?

A. Well, yes, my own practice. I have been called before the grievance committee, sure.

Q. On what occasions, Dr. Yengling?

A. Well, I had a question of a medical-legal case and I was called before the grievance committee. A patient complained.

Q. Well, now, what grievance committee was that?

A. Our local grievance committee here about two years ago.

Q. Was it the same one on which Dr. Stevens was chairman? [2074]

A. No, I think Dr. Lange was the chairman of this committee. He called me before the meeting and we discussed this particular case. I mean, the patient had been treated in a particular way and she thought she was unhappy about it and we had to explain her and her doctor in Yakima, where she was sent—I mean there were various ways of treating her—and that case was arbitrated without any particular difficulty with explanation to the family and to the patient.

Q. Dr. Yengling, do you recall a meeting held in the Marcus Whitman Hotel at or about May 22,

(Testimony of Arthur Yengling.)

1951, at which a discussion was had concerning Dr. Pratt getting in touch with Dr. Robinson's father?

Mr. Kimball: May 22, 1951?

Mr. Sembower: Yes.

A. No.

Mr. Kimball: I know of no such meeting.

A. No, as far as I know, Dr. Pratt did that without any meeting or anything. He did that on his own as a friendly gesture. I mean that he couldn't do anything locally with Dr. Robinson in trying to talk to him, so he tried to appeal to his father. It was a court of last resort.

Q. You were not at the annual meeting of the society held in December of 1950, I take it, since you were out of town? [2075]

A. I don't believe so.

Q. You did not hear Dr. Stevens' remarks at that meeting? I mean, you did not see them later?

A. I don't know what you are referring to.

Q. Now, Dr. Stevens on February the 21st, 1952, wrote a letter to Dr. Cunniffe, chairman of the Judicial Council of the American Medical Association. This was after the expulsion had been reversed. It is Plaintiff's Exhibit 169 for identification. I beg your pardon, it is admitted Plaintiff's Exhibit 169. I ask you to look at this and state whether you have ever seen it before.

A. Well, I have seen this letter. I think I was it at the last deposition.

Q. Was that the first time you saw it?

A. Yes.

(Testimony of Arthur Yengling.)

Q. Dr. Stevens, in his deposition, stated that he had received assistance from you in the preparation of that letter. Is that true?

A. No, I think that letter that he wrote to Dr. Cunniffe, we discussed the matter, but I mean I didn't actually help write the letter. We discussed the matter together but Dr. Stevens signed that as chairman of the grievance committee, but that was a personal letter, that was not from the grievance committee as a committee.

Q. What part, if any, Dr. Yengling, did you play in the [2076] moves leading toward a rehearing of the Judicial Council?

A. I played no part at all.

Q. Did you read Dr. Tompkins' letter to Dr. Howard of April 21, 1952? I will show it to you.

A. Not before it was sent.

Q. Plaintiff's Exhibit 206. Whether you ever saw the original or copy of that before it was sent?

A. No. No, I never saw that before it was sent.

Q. Did you later ratify Dr. Tompkins' request for a rehearing and his other representations to the Judicial Council?

A. I think we passed that at the medical society meeting.

Q. Dr. Yengling, did you hear any other witness other than Tom Brooks give direct testimony on the facts of the Brooks complaint against Dr. Robinson?

A. I heard the Edwards and the Lepianes, I think in one and their complaints. That is all.

Q. Was that at the state grievance committee

(Testimony of Arthur Yengling.)

hearing on April 22? A. Uh-huh.

Q. Now, the board of trustees held that Dr. Robinson violated Sections 1 and 2 of Chapter II of the Principles of Medical Ethics of the American Medical Association. The minutes of the trustees to that effect were read [2077] at the meeting of May the 22nd, I believe, the expulsion meeting.

Did you read, Dr. Yengling, the canon of ethics which was referred to by the trustees?

A. I think I read it at the time.

Q. Do you remember whether it was from the edition of 1949 or 1937?

A. Well, I can't tell you that.

Q. The reason I asked you, there seems to be a little confusion because the minutes refer to Sections 1 and 2, which appears to relate to the '37 edition, and it would be two and three if it related to the more recent one, '49. The text, however, is not different materially.

I would like to ask you what you think that Dr. Robinson violated within the purview of that canon of ethics?

A. Well, I would have to read that section again.

Q. All right, I will show you the '49 edition which would be, I take it, Sections 2 and 3.

The Court: Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Yengling, have you had an opportunity to read the canon?

A. Yes. Well, that is the section that Dr. Robin-

(Testimony of Arthur Yengling.)

son [2078] violated and that we expelled him from the society, Section 2, Chapter II.

Q. Now, was that section, Dr. Yengling, discussed in detail by the grievance committee?

A. No, I don't think the grievance committee had anything to do with that, with this section.

Q. In any of the deliberations that you took part in when the grievance committee met with the trustees, the membership acted——

The Court: Are you talking about the state or the local grievance committee?

Mr. Sembower: I was speaking of the local grievance committee at the time, but I lost sight for a second that he was also a member of the state grievance committee.

The Court: Well, it wasn't clear to me, I thought it might not be to him.

Mr. Sembower: Yes.

Q. In connection with the state grievance committee, Dr. Yengling, was this section taken into consideration?

A. Well, I don't know, I wasn't on any of the deliberation in the state grievance committee on the Robinson case, and I mean I didn't sit in on that at all. Yes, he violated this section and the report in the state grievance committee, I remember that, but I don't remember—there were several sections that the state [2079] grievance committee said he violated. I would have to see the ruling to determine that.

(Testimony of Arthur Yengling.)

Q. Dr. Yengling, did you know that at the time of the May 22nd meeting that Tom Brooks in fact did have syphilis?

A. Well, I didn't any more than what Tom Brooks had said at his meetings. I had no way of knowing anything else.

Q. There never had really been any issue, had there, before the state grievance committee whether Tom Brooks had syphilis or not?

Mr. Rosling: Well, if your Honor please, this witness has already testified that he did not sit as a judge or as a member of the state grievance committee. He was there representing the local society. He also said he didn't sit on the issues or the discussion of the state grievance committee, and that subject, obviously, is something beyond his knowledge. [2080]

Mr. Sembower: I will withdraw that question and ask him whether in the proceedings in which you participated, either as a member of the state grievance committee or as a representative of the local society, was there ever any question raised, serious question raised, that Brooks had syphilis?

Mr. Rosling: If your Honor please, I object to the question because there is no evidence here at all that Dr. Yengling ever sat on the state grievance committee in consideration of this offense.

The Court: Well, except he was there at one time. I am not sure just what your question covers.

Mr. Sembower: I am just asking if he heard

(Testimony of Arthur Yengling.)

anything at the time he was there, either as an individual or a member of either—

The Court: In whatever capacity?

Mr. Sembower: Yes.

The Court: Yes, all right, he may answer that question.

A. Anything besides what Tom Brooks said?

Q. (By Mr. Sembower): That is correct.

A. No.

Q. Was there any question that Brooks had syphilis?

A. No, I think Dr. Robinson told him that he had syphilis and the reports had been checked and rechecked, as I [2081] remember it, and I think that was enough evidence. I don't know that we had any—I never heard of any other evidence, except that later I think Dr. Peter Brooks, as I know about, had it rechecked, but I didn't know about it at that time.

Q. That recheck of Dr. Peter Brooks only confirmed it, did it not?

A. I don't even know what Dr. Brooks' tests were to this date.

Q. Well, now, Dr. Yengling, what about Dr. Robinson's conduct that doesn't conform with this ethic so far as the Brooks case is concerned?

A. Well, Dr. Robinson blackmails an individual and threatens to reveal information. I mean, that certainly is against this section in the book of ethics.

Q. Well, now, Dr. Yengling—

(Testimony of Arthur Yengling.)

A. That is a serious problem. What can we do about it but take action on it?

Q. Was it not a fact that Brooks had refused to take treatment? A. I don't know about that.

Q. Well, you had heard the testimony, had you not?

A. Well, I don't know too much about it, how much he refused. I understand he refused, but I didn't know very little about it. [2082]

Q. If a man has a serious and dangerous disease and he refuses to take treatment, do you not think that responsible members of his family should be informed?

A. Well, I don't think the doctor should threaten him, blackmail him, to get a letter and say that, "I will tell your family you have syphilis if you don't give me that letter." I don't think that that is the way to do it.

Q. All right, on what basis do you say that it was a threat?

A. Well, he definitely threatened him. He said, "I will tell your family if you don't give me that letter."

Q. On the basis of what testimony do you predicate your statement?

A. On the basis of Tom Brooks.

Q. On anything else? Anything else but that? On what other testimony?

A. Well, Tom Brooks, and I think that the family, probably, through the Edwards. I can't re-

(Testimony of Arthur Yengling.)

member the details of it, but I think they more or less confirmed that same information.

Q. Well, Edwards was the only other one that testified, was he not?

A. But I think that that all came out in the case. I can't remember just where it is.

Q. You just have kind of a vague [2083] feeling?

A. Yes, sure. It happened six years ago, why wouldn't it be vague?

Q. At the time was it vague, though?

A. No, very definitely not.

Q. Did you not also know that Mr. Edwards had conceded that Dr. Robinson had not used the word "syphilis" there?

A. Well, that is all right, he implied what he had. He had a disease of his blood, he said. You didn't have to say "syphilis." The public know what you mean when you say you have a disease of your blood, I want to take a test. They know what you are testing for. I mean, that implication is all you need there.

Q. As a matter of fact, it was a matter, at the most, of inference, wasn't it, on the part of Tom Brooks as to whether it was a threat or not?

A. Well, I thought that there is some question about that, whether Dr. Robinson actually used the word "syphilis." I can remember there was a question about that. I can't remember the depositions or the testimony, but whether he used the word "syphilis" or not, he implied the disease.

(Testimony of Arthur Yengling.)

Q. Did you ever consider in this connection, Dr. Yengling, the difference between words which amount to a warning and words which amount to a threat?

A. Now, this wasn't any warning. I heard Mr. Brooks give [2084] his testimony just exactly what happened and it was very graphic and I can still remember that part today, and he said, "If you don't give me the letter, why, I will do this and that." And I don't think Mr. Brooks was doing anything but repeating that exactly the way it happened.

Q. And was he antagonistic at the time?

A. Not particularly.

Q. He was angry, was he not?

A. Not particularly.

Q. Just calm and judicial?

A. No, but he thought it was a serious matter and he had to get it. He was going to have a lawsuit if we didn't do something about it for a man that threatened him.

Q. Dr. Yengling, did you give any attention to the fact that Brooks, as a result of this incident, did in fact undertake treatment?

A. I don't know whether he has or not.

Q. It was with Dr. Peter Brooks right in your own office, was it not?

A. Well, I understand he takes care of him, but I don't know anything about Mr. Tom Brooks and his treatment. [2085]

MRS. NOEL B. EDWARDS

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Would you state your name, please, Mrs. Edwards?
A. Mrs. Noel B. Edwards.

Q. Where do you reside, Mrs. Edwards?

A. 1254 Bell Street, Walla Walla.

Q. You are the wife of Noel Edwards, who is a defendant in this lawsuit?
A. Yes.

Q. And you are also the Mrs. Edwards who registered a complaint or protest of some nature against Dr. Robinson?

A. I registered an inquiry.

Q. You registered what?

A. An inquiry, I made an inquiry regarding Dr. Robinson's charge.

Q. And that was made to Mr. Fullerton, was it not?
A. Yes. [2086]

Q. On the 30th of August, 1950? Does that date—
A. I believe that is correct.

Q. When was the first time, Mrs. Edwards, that you communicated with Mr. Fullerton?

A. That day I made the complaint.

Q. There is an indication here from the record of the state grievance committee that you had communicated with him before with respect to this matter and he told you that a complaint wasn't warranted. Do you recall that?
A. No, I do not.

(Testimony of Mrs. Noel B. Edwards.)

Q. I will read this brief passage from the minutes of the state grievance committee and ask you if it refreshes your memory at all. You are Mrs. Joyce Edwards, for the record? A. Yes.

Q. Mrs. Joyce Edwards was called as a witness and answered questions by Dr. Berge with respect to this matter about the child. Dr. Berge said:

“Are you quite sure it was Epsom salts?”

And you answered:

“I am quite sure that is what he told her. He said he didn’t think we would give it and she couldn’t go to sleep and was crying. When I got this statement, I called. The reason I made the check, we hadn’t gotten the prescription and he said [2087] it was for the phone call. I didn’t think he was warranted in that. In my opinion, it was my youngster’s life if we couldn’t make her vomit, and he said that was definitely what it was for. I called Mr. Fullerton and asked if I could make a complaint and he said it wasn’t warranted.”

Do you recall making that statement at the state grievance committee meeting?

A. I don’t remember.

Q. You what?

A. I don’t remember that far.

The Court: She doesn’t remember it, she says.

Q. (By Mr. McNichols): Well, now, Mrs. Edwards, did you at any time state to anyone that you had an intention to sue Dr. Robinson over this matter? A. No.

Q. To your knowledge, did your husband ever

(Testimony of Mrs. Noel B. Edwards.)

make such a statement? A. No.

Q. Did you and he ever discuss it? A. No.

Q. Did it ever enter your mind? A. No.

Q. During the time, Mrs. Edwards, when you talked to Dr. Robinson when he came to see you shortly after you had [2088] made this complaint, he came out to your house one day and talked to you, I believe, didn't he?

A. He came out to the house to get the letter.

Q. He talked to you and your mother?

A. Yes.

Q. Now, all during that time, his attitude was friendly and there was no animosity of any kind between you, was there? A. No.

Q. In fact, you joked with him?

A. I don't remember that I joked with him, but I mean there was no animosity.

Q. Did you go to another doctor, Mrs. Edwards, in the first week of October, 1950?

A. Not that I can recall.

Q. Did you ever take any further treatments from Dr. Robinson after this incident? A. No.

Q. And now, the incident with the child occurred in the early part of June, is that correct?

A. I believe so.

Q. And your complaint was made on the 30th of August? A. Yes.

Q. Did you get a bill for this dollar and a half each month the first of each month? [2089]

A. I can't recall.

(Testimony of Mrs. Noel B. Edwards.)

Q. In any event, approximately a three-month period expired between the day that the incident occurred to the child and the time you made any complaint? A. Yes, I believe so.

Q. Would you say, Mrs. Edwards, that you had not telephoned Mr. Fullerton as you indicated at the State grievance committee hearing?

A. I can't recall that I did. It is possible. [2090]

* * *

Mr. Sembower: Your Honor, at this time then I will read quite a short transcript of deposition of George F. Lull on written interrogatories in this case taken at Chicago, Illinois, March 19, 1956. I will simply read this into the record because it is quite short.

The Court: All right.

Mr. Sembower: (Reading):

DEPOSITION OF GEORGE F. LULL

“George F. Lull, having been first duly sworn, deposeth and saith as follows:

“Interrogatory No. 1. State your name [2094] and address.

“A. George F. Lull, 535 North Dearborn Street, Chicago, Illinois.

“Interrogatory No. 2. Do you hold an official position in and with the American Medical Association, and if your answer is ‘Yes,’ how long have you held that position?

(Deposition of George F. Lull.)

“A. Yes. Secretary and general manager since January the first, 1956.

“Interrogatory No. 3. Do you hold an official position in connection with the Judicial Council of the American Medical Association, and if your answer is ‘Yes,’ what is that position?

“A. Yes. I am a constitutional secretary of the Judicial Council, without vote. The actual work of the secretary is carried on by an executive secretary.

“Interrogatory No. 4. Have you held an official position in connection with the said Judicial Council during the last five years, and if your answer is ‘Yes,’ what position or positions have you held?

“A. Yes. The same positions as stated above.

“Interrogatory No. 5. In that certain deposition of your testimony taken upon oral [2095] interrogatories in the case of Robinson v. Lull, et al., Civil Action No. 55 C 1053 in the District Court of the United States for the Northern District of Illinois, Eastern Division, on December 15, 1955, at Room 1414, 105 South LaSalle Street, Chicago, Illinois, the following questions were propounded to you and you gave the following answers at page 72 of the transcript, did you not?

“(a) Q. Does the AMA have a policy with respect to whether an appellant should be held in status quo pending his appeal or should be expelled?

“A. Insofar as the American Medical Association is concerned, he should remain a member until final disposition of his case is made.

(Deposition of George F. Lull.)

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall this question. My answer is that there is no fixed policy of the AMA. These matters in constituent and component societies depend upon their own bylaws. My [2096] answer is the same as given before, except that I have clarified it, as apparently the answer was an expression of my own opinion.

“Interrogatory No. 6. In the said deposition the following question was propounded to you, and you gave the following answer at page 74 of the transcript, did you not?

“(a) Q. Dr. Cunniffe expressed a very strong feeling along that line?

“A. I have the same feeling, that a local society, in case of an appeal, should hold the man in status quo until his appeal is heard, if they know that he has made an appeal.

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall the question and I do not know, of course, how Dr. Cunniffe felt. The answer is apparently an expression of my own opinion.

“Interrogatory No. 7. In the said deposition, the following questions were propounded to you, and

(Deposition of George F. Lull.)

you gave the following answers at page 99 of [2097] the transcript, did you not?

“(a) Q. I have here, Dr. Lull, a photostatic copy of what purports to be a letter from Dr. Ralph Keyes, president of the Walla Walla Medical Society, to Dr. Reuben A. Benson, president of the State society, dated February 18, 1952, and he says here:

“‘We wish to advise that we are not at this time taking any action in this matter until the Society has received certain information from the Judicial Council of the AMA, which has been requested, and until the decision has been reached as to whether or not the decision will be appealed to the Board of Trustees of the AMA.’

“Dr. Lull, are you aware of any procedure within the AMA which would have permitted an appeal of this decision of the Judicial Council to the Board of Trustees? A. I am aware of none.

“(b) Q. Do you know of any correspondence or telephonic request that you received [2098] from any Society officials in Washington asking that such an appeal be taken?

“A. I don't recall any. I don't recall any.

“(c) Q. Do you have any idea to what he may have referred here?

“A. No, I don't know what he means because the opinion of the Judicial Council is final in these cases as far as the AMA is concerned. In fact, the Judicial Council serves under the House of Delegates, and not the Board of Trustees.

(Deposition of George F. Lull.)

“(d) Q. Would there be any appeal to the House of Delegates?

“A. No; I have never known any.

“(d) Q. Was there any attempt made to appeal it to the House of Delegates that you know of?

“A. No, not to my knowledge.

“I now ask you that same question in this case. Is your answer to those questions the same? If not, what is your present testimony, and why are you changing it?

“A. I do not recall the specific questions, but my answers would be the same. [2099]

“Interrogatory No. 8. In the said deposition, the following questions were propounded to you, and you gave the following answers at page 108 of the transcript, did you not?

“(a) Q. Dr. Cunniffe in five places in his deposition states he was totally unaware that Dr. Robinson had lost his hospital privileges during the period of the expulsion.

“Do you know of your own knowledge whether Dr. Cunniffe had forgotten, had known it, or what the situation was?

“A. No, I do not. I have no knowledge of what he knew about it. We took it for granted that he would be reinstated when the telegram went out.

“(b) Q. Reinstated to his hospital privileges?

“A. To his county society, but nothing about his hospital privileges. That was something that we have no control over.

“(c) Q. You say you took it for granted that

(Deposition of George F. Lull.)

he would be? A. Yes.

“(d) Q. Restored. What if the local society refused to do so, what would you have [2100] done?

“A. Well, I don’t know.

“(e) Q. Has a local society ever refused to do so? A. Not to my knowledge.

“(f) Q. Do you know of any other instance than this where the local society has refused to construe a telegram, such as the one you sent to them, as indicating the decision of the Judicial Council?

“A. I don’t recall any.

“I now ask you those same questions in this case. Is your answer to these questions the same? If not, what is your present testimony, and why are you changing it?

“A. I do not recall the specific questions and answers. To Question (a) I would answer that I do not know whether Dr. Cunniffe had forgotten or had known it. I have no knowledge of what he knew about the case.

“To Question (b), to clarify it, I would change the answer to read that the American Medical Association had nothing to do with his hospital privileges. We have no control over [2101] matters of that kind.

“To Question (c), for purposes of clarification, I would say that it was not taken for granted that he would be restored to his hospital privileges.

“To Question (d) I would state again that I do not know.

(Deposition of George F. Lull.)

“To Question (e) I would say not to my knowledge.

“To Question (f), I do not recall whether they did or did not.

“The answers to these questions have been changed somewhat for the purpose of clarification.

“Interrogatory No. 9. I now ask you if on page 123 of the said deposition, did you not give the following answer to the question which was propounded to you:

“(a) Q. Dr. Lull, was this (the decision) prepared according to the standard procedure for rendering of decisions of this kind?

“A. I believe it was, yes.

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are [2102] you changing it?

“A. I do not recall the specific question. What decision does this refer to? In order to clarify this, I would say that decisions of this kind are rendered by vote of the Judicial Council and are prepared by others than myself, and I assume that both the rendering of the decision and the preparation of the decision were carried out as is customary.

“Interrogatory No. 10. In the said deposition, the following question was propounded to you, and you gave the following answer at page 132 of the transcript, did you not:

“(a) Q. Well, now, during the pendency of a

(Deposition of George F. Lull.)

motion for rehearing, would the doctor still be under suspension then, expulsion?

“A. In this case? No, he shouldn't have been. He was, as far as the AMA was concerned, he was reinstated at the time the decision was made in the first hearing.

“I now ask you that same question in this case. Is your answer to this question the same? If not, what is your present testimony and why are [2103] you changing it?

“A. I do not recall the specific question. In order to clarify my answer, I would say that the membership in the local society is dependent upon the bylaws of the local society. He was a member of the AMA. The answer was changed to clarify and because I improperly used the word ‘reinstated’ as far as the American Medical Association is concerned. The answer given was a matter of my personal opinion apparently.

“Interrogatory No. 11. In the said deposition, the following questions were propounded to you, and you gave the following answers at page 140 of the transcript, did you not?

“(a) Q. You were at this meeting (April meeting, Judicial Council)? A. I was there.

“(b) Q. What did the Judicial Council consider with respect to the granting of this rehearing?

“A. Well, I don't recall the details. But that was evidently the opinion of the chairman when the request for rehearing was mentioned.

“(c) Q. Well, now, did it act solely upon the

(Deposition of George F. Lull.)

letter [2104] of Dr. Tompkins there was a shortness of time for them to prepare, did the Council act solely on that basis?

“A. I presume so, plus what the chairman said about it, emphasizing the fact that it was procedure only that should be considered.

“(d) Q. Well, now, did anybody present to the Council any argument on behalf of Dr. Robinson there was adequate time?

“A. Not to my knowledge.

“(e) Q. In other words, the Council, as you heard it, only heard the point made by the Walla Walla Society that there wasn't time for them to get ready, they didn't hear any argument so far as Dr. Robinson's position might have been in the matter?

“A. Not that I recall, no, they didn't.

“I now ask you those same questions in this case. Are your answers to these questions the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall the specific questions [2105] and answers.

“In answer to Interrogatory (a), I was at this meeting.

“In answer to Question (b), I do not recall the details.

“In answer to Question (c), I presume so, although I do not recall.

“In answer to Question (d), not to my knowledge.

(Deposition of George F. Lull.)

“In answer to Question (e), not that I recall.

“Interrogatory No. 12. In the said deposition, the following questions were propounded to you, and you gave the following answers at page 174 of the transcript, did you not:

“(a) Q. Dr. Lull, if the circumstances are that the doctor is without his practice, is languishing in his practice, is without hospital connections, has had his insurance cancelled, and his reputation is suffering, if those circumstances are present, would you then act more rapidly than the reasonable length of time?

“A. I suppose. This was in, when, after [2106] the San Francisco meeting?

“(b) Q. This is the Chicago meeting.

“A. The Chicago meeting.

“(c) Q. The 9th of June, 1952?

“A. Remember, when one of these meetings occurs, we have a mass of work of all types thrown upon us following the meeting. We have the minutes of the House of Delegates. We have the minutes of the Board of Trustees. We have all of this thrown at us.

“Now, that isn't too long a time. Of course, we didn't know all of these things were supposed to be happening to Dr. Robinson.

“I might say that we felt very kindly toward Dr. Robinson; everybody did, and we would have done the best we could under the circumstances. We didn't know anything about this catastrophe that had happened to him, allegedly.

(Deposition of George F. Lull.)

“(d) Q. But the thing that comes to my mind, Dr. Lull, is that Dr. Robinson had telephoned you and told you he was in that predicament. He had wired, he had [2107] written many times. Our whole deposition here is concerned with one of those incidents after another. Would not those bear home to you his predicament?

“A. He was supposed to be a member of his County and State society as far as we knew. He was supposed to be because he had been reinstated back after the first hearing.

“(e) Q. Well, now, as I recall, you stated earlier that you were under the impression he always had his privileges. Do you mean he was deprived of his privileges up to December?

“A. No. I had no knowledge of whether he was deprived of his privileges between the time of the action of the local society and the report received from the Judicial Council, but I certainly was aware of the fact that after the Judicial Council's report was received, I took it for granted that he would be reinstated if he had been suspended.

“I now ask you those same questions in this case. [2108] Is your answers to the questions the same? If not, what is your present testimony and why are you changing it?

“A. I do not recall the specific questions and answers.

“In answer to Question (a), I would say that I would not act more rapidly than the reasonable length of time.

(Deposition of George F. Lull.)

“In answer to Questions (b) and (c), I would give the same answers.

“In answer to Question (d), I do not recall the contents of the letters, nor do I recall the subject matter of the telephone conversations. I assume that he was a member of his County and State societies.

“To Question (e), I would give the same answer.

“Interrogatory No. 13. Has anyone discussed these interrogatories with you? If your answer is ‘Yes,’ state who that person or those persons were; when and where and in what manner the discussions took place, and in detail what was said to you, and what you said. A. No.”

And that ends the reading of the [2109] transcript.

Mr. McNichols: Mr. Davis.

JOHN E. DAVIS

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Would you state your full name, please, Mr. Davis? A. John E. Davis.

Q. And where do you reside?

A. 525 Sheridan Road, Walla Walla.

Q. And where are you employed, Mr. Davis?

A. The Walla Walla Valley Medical Service Corporation.

(Testimony of John E. Davis.)

Q. And what is your capacity there?

A. Manager.

Q. And how long have you been in that position?

A. Since April 1st, 1952.

Q. Did you immediately succeed Mr. Fullerton in that job? A. Yes.

Q. Mr. Davis, there has been some discussion today in the testimony here and during the deposition we discussed it with respect to whether or not you have in your files in the medical bureau any correspondence with respect to two other complaints which have been referred to as [2110] having been received by the grievance committee at the same time the Robinson complaint was received. Do you recall those discussions?

A. Relative to the other—

Q. The other complaints?

A. The other complaints before the grievance committee? Yes, I remember.

Q. Did you make a search of your files to attempt to find any papers relating to those complaints? A. Yes, we searched the files.

Q. Were you successful in finding any such papers? A. We found nothing.

Q. Can you tell us approximately what the gross income of the medical bureau was in the year 1950?

A. Do you mind if I refer to my notes here?

Q. No, I prefer that you do, Mr. Davis.

Mr. Kimball: I wonder if this is material?

Mr. McNichols: Are you objecting?

Mr. Kimball: Yes, I was objecting.

(Testimony of John E. Davis.)

Mr. McNichols: Oh.

The Court: What is the purpose of it?

Mr. McNichols: Well, your Honor, just attempting—

The Court: To show the interest of the defendants in the bureau?

Mr. McNichols: The background, the interest of the [2111] defendants in this matter.

The Court: I think there were questions and answers as to what percentage of their income came from the bureau. I suppose it is along the same line. Objection overruled.

Mr. McNichols: It will be very brief.

Q. What is it you have there, a breakdown of the figures?

A. This is a breakdown of the bureau income, 1950 to '55.

Q. And that shows the income from the bureau and the income—

A. Bureau contracts and then from the welfare, which is a separate contract.

Q. Would you just go through, then, each of the six years that you have there and state the year and the income from the bureau, the income from the welfare program, and the total income?

A. Now, there is one thing about this welfare income I want to call to your attention. This includes Walla Walla, Columbia, Garfield and Asotin Counties.

Q. All the doctors in those counties?

A. That's right.

(Testimony of John E. Davis.)

Q. That participate?

A. The income from the welfare includes all of the recipients in those four counties.

Now, in 1950, the income from the bureau contracts was \$63,096.35; from welfare, [2112] \$78,897.05.

1951, the bureau——

Q. Could you give us that total, then?

A. The grand total?

Q. Yes.

The Court: Contracts and then the other you said was welfare?

A. Welfare.

The Court: All right.

A. The grand total is \$141,993.40.

In 1951, the bureau income, \$82,635.37; from welfare, \$68,443.50; grand total of \$151,078.87.

In '52, the bureau income, \$91,521.54; welfare income, \$60,031.80; grand total, \$151,553.34.

In '53, the income from bureau contracts was \$102,821.88; welfare was \$82,224.87; a grand total of \$185,046.75.

In 1954, the bureau income, \$93,867.00; from welfare, \$81,862.00; a grand total of \$175,729.00.

In '55, the income from the bureau contracts was \$102,585.36; and from the four counties in welfare, \$84,075.37; a grand total of \$186,660.73.

Q. (By Mr. McNichols): How many doctors, Mr. Davis, participate in those funds insofar as the bureau income is concerned?

A. Approximately 55. [2113]

(Testimony of John E. Davis.)

Q. They are the members of the Walla Walla Valley Medical Service Corporation?

A. That's right.

Q. That includes doctors as far as Pomeroy, does it not? A. Yes. Some in Asotin.

Q. Pardon? A. Some in Asotin, too.

Q. In other words, this organization includes doctors from the surrounding area?

A. That's right.

Q. How many share in the proceeds from what you have referred to there as—what is it, welfare?

A. Yes. That is all of the doctors in Walla Walla, Columbia, Garfield and Asotin Counties.

Q. Do those figures that you refer to as the welfare figures represent some of the money which comes entirely from the State of Washington?

A. That is all contract money from the state.

Q. And that is based upon the contract between the county bureau and the state association and the state?

A. Well, the Washington State Association, that is, the Washington Physicians' Service, makes that contract for all of the 23 bureaus in the State of Washington.

Mr. McNichols: I think that is all, Mr. [2114] Davis.

* * *

DEPOSITION OF DR. LEROY CARLSON

Mr. Sembower (Reading, continued):

Q. Did you understand that my father was contacted to extricate me from a serious predicament?

A. Well, yes. I would say yes.

Q. Just what predicament was I supposed to be in? A. You were expelled by the Society.

Q. And my predicament was that I was not out in the cold as it were, is that your understanding?

A. I don't mean quite out in the cold.

Q. Well, let me rephrase it: That I was expelled; that was my predicament.

A. Well, of course, you have to add more than that.

Q. What would you add to it in order to give a satisfactory answer?

Mr. Rosling: Well, that is all based on hearsay you may have received, Dr. Carlson, from some one else.

A. Well, now, I am a little vague on this; well, yes, I would say it is indirect.

Q. (By Dr. Robinson): Well, this discussion over my father, was it held in a meeting, formal or informal, of [2120] officers, including yourself.

A. Yes, I would say that.

Q. Do you recall what meeting it was held in?

A. Well, it seems to me it was in a meeting of the Board of Trustees in the Marcus Whitman Hotel, I don't recall when.

Q. In the Marcus Whitman Hotel? Was that before or after my expulsion?

Mr. Rosling: If you know, Doctor.

(Deposition of Dr. Leroy Carlson.)

A. I don't know. I would say after.

Q. (By Dr. Robinson): At the meeting where I was expelled, did you come out of the expulsion meeting several times to advise me that a vote of some kind was about to be taken?

A. I did not come out several times.

Q. How many times did you come out so far as you can remember?

A. I went out once to tell you that we were about to vote.

Q. Did you come out again?

A. I don't recall. Yes, I did, to bring you back in.

Q. Who told you to come out and talk to me?

A. Dr. Tompkins. [2121]

* * *

ALVIN R. KINCAID

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Alvin R. Kincaid.

Q. And where do you reside, Dr. Kincaid? [2124]

A. In John Day, Oregon.

Q. Do you also have a professional address there? A. Yes, I do.

(Testimony of Alvin R. Kincaid.)

Q. Do you have an address at any other locality in that area?

A. I also have an office at Prairie City.

Mr. Rosling: Where?

A. Prairie City.

Q. (By Mr. Sembower): The acoustics are not so good in some parts of the room, Dr. Kincaid, so if you could speak rather strongly, I think it would help.

Are you a member of the American Medical Association, Dr. Kincaid? A. Yes.

Q. Are you a member of any other professional societies or associations?

A. The Oregon State Medical Society.

Q. Do you have a local society in your community?

A. We are just drawing up the constitution and bylaws. We are rather isolated down there and there are only five of us, so that is enough now so we can have a local society.

Q. And that is now in formation?

A. Yes.

Q. Did you formerly practice in Walla Walla, Dr. Kincaid? [2125] A. Yes, I did.

Q. And when did you practice in Walla Walla?

A. I started here September, 1950, until March of 1952.

Q. And then after you left Walla Walla, where did you go then?

A. To Prairie City, Oregon.

Q. Where you now have your office there?

(Testimony of Alvin R. Kincaid.)

A. One office there.

Q. And then later, you opened an office at John Day?

A. Yes. A group practice, three of us.

Q. And have you been practicing continuously there since? A. Yes.

Q. While you were in Walla Walla, Dr. Kincaid, were you a member of the local medical society? A. Yes, I was.

Q. Directing your attention to the date of on or about May the 22nd, 1951, I will ask you if you remember attending a meeting of the society at that time? A. I do.

Q. I will show you the minutes, Dr. Kincaid, of the meeting of the Walla Walla Valley Medical Society held at St. Mary's Hospital, May 22nd, 1951, and direct your attention to the members present and ask if you find your name there?

A. My name is here. [2126]

Q. If you want to refer to the minutes at all, Dr. Kincaid, I will have the book open here.

Dr. Kincaid, do you remember anything particularly which happened at that meeting?

A. Well, there was a big discussion regarding Dr. Robinson, who was a member of the society.

Q. And was there action taken that night by the society with respect to Dr. Robinson?

A. I think that was the night that he was voted to be expelled from the society.

Q. Yes. Do you remember, Dr. Kincaid, the dis-

(Testimony of Alvin R. Kincaid.)

cussion which preceded the expulsion of Dr. Robinson?

A. It was a lengthy meeting and I don't remember everything. I do remember that Dr. Page and Dr. Tompkins had been to Seattle or over to the state medical society and they had come back and——

Mr. Rosling: If your Honor please, I am going to ask that that statement of the witness be stricken because it is purely a volunteer statement and it is based, obviously, upon hearsay.

The Court: Unless they said so. I understood him to testify that they had been there.

Mr. Rosling: He said they had been there and that is all.

The Court: I see. Well, he wouldn't know that of his [2127] own knowledge.

Q. (By Mr. Sembower): Dr. Kincaid, about how long did the meeting take, the portion of the meeting relating to Dr. Robinson, if you recall?

A. Just the portion relating to Dr. Robinson?

Q. Well, the whole meeting, if you recall, the length of the meeting, and so on?

A. About two and a half hours, at least, and most of it was in regard to Dr. Robinson, as I remember.

Q. Now, who were the members of the society particularly that you remember speaking during the deliberation concerning Dr. Robinson?

A. Dr. Tompkins and Dr. Page.

Q. Anyone else?

(Testimony of Alvin R. Kincaid.)

A. I particularly remember Dr. Cowan getting up and saying something in favor of Dr. Robinson.

Q. Was Dr. Robinson present all the time during this meeting?

A. No, he was asked to leave after he had talked, I think, himself.

Q. Now, you testified that Dr. Tompkins had spoken at the meeting. Do you recall the gist of his remarks?

A. His remarks were along the line that the State of Washington had set up some rules and regulations in regard to patient complaints and that this was one of [2128] the first cases and that we had to act in expelling the member in question because we would be upholding the state society. That is the way I remember it.

Q. Did he make any comments to the meeting about having been to Seattle to confer with state officials there? A. Repeatedly.

Q. And what did he say with respect to that, if you recall?

Mr. Rosling: Is this Dr. Cowan?

The Court: No, this is Dr. Tompkins, as I understood it.

Mr. Sembower: Yes, it is Dr. Tompkins to whom you are referring?

A. Yes.

Q. Yes

A. Well, he said we almost had to vote the expulsion of Dr. Robinson to uphold what was set up in the state society.

(Testimony of Alvin R. Kincaid.)

Q. And do you remember anything further that he said along that line? Let me ask you this, did he refer to the state grievance committee setup in his remarks?

A. Yes, that was discussed very much in detail.

Q. And what did he say about that, if you recall?

A. Well, it was set up over there and we were following the pattern here in our local society and we would have to go along with the state. [2129]

Q. Well, then, I believe you testified a moment ago that Dr. Page spoke. Do you remember the gist of his remarks?

A. His remarks were the same idea, that here the state had set up something that was new and good and we had our own committee and we would have to go along with the state, and if we didn't expel Dr. Robinson, it would upset the whole new plan that was being organized, or I had the idea it was new, anyway. It was new to me.

Q. And then about how long did the speeches occupy, if you recall, prior to the presentation of the issue to a vote, the issue of expulsion?

A. I wouldn't remember exactly how long, but I know they were quite lengthy speeches.

Q. Was any reference made by Dr. Tompkins to Dr. Robinson's mentality, state of his mental condition, if you recall?

A. I recall that was referred to.

Q. Do you remember the gist of his remarks along that line?

(Testimony of Alvin R. Kincaid.)

A. I remember paranoid being mentioned, and Dr. Robinson might be dangerous and—to some of the members of the society.

Q. Now, I believe you also testified that Dr. Walter Cowan had spoken. What was the gist of his remarks, Dr. Kincaid, if you recall?

A. I recall his remarks as stating that he thought this was [2130] far too severe an action to take against a member of the society; that any of us might make mistakes; and that he was more in favor of a warning, a reprimand, and not an expulsion.

Q. Was there any reaction on the part of the other members to Dr. Cowan's remarks, if you recall?

A. Would you please state the question again? I didn't—

Q. Well, did other speakers who had spoken, Dr. Tompkins or Dr. Page, did they have any rejoinder to make to Dr. Cowan's remarks, if you recall?

A. All I can remember is that we were told we had to vote to uphold the state society and the local society.

Q. Do you recall how you voted, Dr. Kincaid, when the matter was placed to a vote?

A. I voted against expelling Dr. Robinson. I think I showed my vote to another member there so I wanted proof that I voted that way.

Q. Who was the other member, Doctor?

A. Dr. Ivan Bohlman.

(Testimony of Alvin R. Kincaid.)

Q. Did Dr. Bohlman make any remarks that you recall at the meeting?

A. I think he did make remarks similar to what Dr. Cowan made. Not as lengthy, but showing he wasn't in favor of expulsion.

Q. Do you recall what the vote was? [2131]

A. Yes, I remember how many were against it.

Q. How many were against it, if you recall?

A. Five was marked off on the blackboard. The votes were marked as they were opened on a blackboard so everybody could see, and there were four and then the fifth one. They were crossing them across with the fifth one to make five.

Q. Do you have any doubt about your testimony that there were five votes against expulsion?

A. Well, that always stuck in my mind that there were five, because there were four marks and they made the fifth one across and that is as far as they went in that row.

Q. Did Dr. Page make any comment about the votes that had been cast against the expulsion, Dr. Kincaid, if you recall?

A. I think Dr. Page did make very definite remarks, short and quite cryptic, that there should have been a unanimous vote, too bad that there wasn't a unanimous vote, and that it should have been, and that is all I remember about his remarks afterward.

Mr. Sembower: I think that is all, your Honor.

(Testimony of Alvin R. Kincaid.)

Cross-Examination

By Mr. Kimball:

Q. Dr. Kincaid, at this meeting you have just testified to, [2132] do you remember that the summary of your board of trustees was read in full to the society that evening? I think it was read by Dr. Tompkins or possibly by Dr. Tompkins and Dr. Carlson. Do you remember that?

A. There was something read. I certainly don't remember the reading as well as the discussion.

Q. You referred to the state grievance committee. Do you also remember that the opinion of the state grievance committee was read as part of that summary? Do you recall that?

A. That, I believe, was read there that night.

Q. Do you remember Dr. Robinson speaking in his own defense at that meeting?

A. I remember he talked at the first of the meeting.

Q. Did he have considerable time on the floor in his defense?

A. Not in comparison to the length of the meeting.

Q. Well, would you care to make an estimate, whether it was forty minutes or an hour or twenty minutes, or how long would you recall it as being?

A. It would merely be a guess, but I would guess about twenty minutes.

Q. Do you recall whether or not he distributed

(Testimony of Alvin R. Kincaid.)

some documents to the society that night in connection with his defense? [2133]

A. I do not recall.

Q. Do you recall that a witness, a Mr. Edwards, was presented at that meeting for some statement or testimony?

A. There was some non-professional man talked. I don't remember his name.

Q. And those were all heard by you and the other members in attendance at that meeting?

A. Would you please state your question again?

Q. Dr. Robinson and Mr. Edwards, if that were the person, were heard by you and the other members in attendance at that meeting?

Mr. Sembower: Your Honor, the question might be slightly rephrased, I think, because the witness wouldn't know whether some had left the room or something of that sort. I might suggest it might be phrased that he heard them presented.

The Court: Well, yes.

Mr. Kimball: Well, I said those in attendance. If they weren't in there, I presume they weren't in attendance. If they were there, I presume they were in attendance.

The Court: I assume your question implied, was heard by those in the meeting?

Mr. Kimball: That's right, that is what I intended.

The Court: It may be considered in that [2134] way.

(Testimony of Alvin R. Kincaid.)

A. Would you state your question? I lost track here where you are.

Q. (By Mr. Kimball): Well, I will try to make it a little simpler, Doctor.

Dr. Robinson's remarks that evening and such other evidence or statements that were made by a non-professional person, if there was one there, were heard by you and the others that were in the meeting at the time you heard it, were they not?

A. I think Mr. Edwards just came in and when he was through talking or being questioned, he left, and Dr. Robinson, I know, left the room shortly after he had talked. I believe he was asked to leave.

Q. Dr. Kincaid, the ballots that were taken were secret ballots, were they not?

A. They were on slips of paper and handed in to somebody that collected them and then they were unfolded.

Q. That is what I mean by secret?

A. Yes.

Q. Dr. Kincaid, you didn't feel compelled to vote in any way except as you desired, did you?

A. Well, there was plenty of pressure brought to urge you to vote a certain way.

Q. You mean by that arguments made on both sides, don't you?

A. Most of the argument was that you should vote to expel [2135] Dr. Robinson.

Q. Did you take the floor and make an argument?

A. I don't think anybody called on me to, and I don't recall standing and saying anything.

(Testimony of Alvin R. Kincaid.)

Q. You could have if you wished, could you not, Doctor?

A. I was a member; I think I had the right to stand up and ask for the floor.

Mr. Kimball: I think that is all.

The Court: Any other questions?

Mr. Rosling: No questions.

Mr. Sembower: That is all.

Mr. McNichols: May this witness be excused?

The Court: I assume he may be excused then from further attendance.

The Witness: Thank you.

Mr. Sembower: I wanted to ask one other question, I'm sorry.

Redirect Examination

By Mr. Sembower:

Q. Dr. Kincaid, did you appear here pursuant to a subpoena?

The Court: To what?

Mr. Sembower: To subpoena.

A. Yes, I was subpoenaed.

Mr. Sembower: Thank you. [2136]

Mr. Rosling: I think that is immaterial, your Honor, because the subpoena had no force. This doctor is a resident of the state of Oregon.

Mr. Sembower: I merely want to point out that a subpoena was served.

Mr. Rosling: He necessarily would be here voluntarily. [2137]

JOHN C. LYMAN

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. John C. Lyman.

Q. And what is your address, Dr. Lyman?

A. My office is the Baker Building, Walla Walla.

Q. And what is your residence address?

A. Clinton Court, 82.

Q. You are a medical doctor?

A. Well, my business is surgery. That is a general term, yes, medical.

Q. That is your specialization, surgery?

A. Yes, sir.

Q. How long have you practiced in Walla Walla, Dr. Lyman? A. Since the first World War.

Q. That would be about 1918?

A. No, about '20.

Q. And have you been during that time a member of the local society, as now constituted or its predecessor group?

A. I was taken in soon after I came, whatever the regulations [2138] were.

Q. What official positions, Dr. Lyman, have you held in the local society since 1949?

A. I don't believe that I have held any since

(Testimony of John C. Lyman.)

'49. I wouldn't swear to that, though I don't believe I have.

Q. Did you not have a connection with the grievance committee?

A. I was asked by the president to sit in on that as a senior member of the society.

Q. Did you consider yourself a member of that committee? A. No, sir.

Q. You considered that you were not a member of that committee? A. That's right.

Q. Did you have any official positions during that period, Dr. Lyman, with the American Medical Association? A. No, sir.

Q. With the Washington State Medical Association?

A. I was on the state board of trustees in the late 40's.

Q. Are you now a member of the local medical service bureau? A. Yes, sir.

Q. And how long have you been a member of the bureau?

A. Well, I don't know. I was a member soon after it was organized and I think that I was out of it at one time [2139] for a short time, but I couldn't swear to that, either.

Q. Could you estimate, Dr. Lyman, as to approximately the amount of your income that is attributable to bureau matters?

A. No, it would be purely a guess because it is very hard to figure out when there is a group in-

(Testimony of John C. Lyman.)

volved that way. But it is not any very large per cent, it is a small per cent.

Q. Would it be as large as ten per cent, say?

A. Oh, it might. I rather doubt it, but it might.

Q. Do you recall Dr. Page discussing the local grievance committee with you, Dr. Lyman?

Mr. Rosling: At what time?

Mr. Sembower: In 1950 or at the very inception of the grievance committee.

A. I remember that he came and asked me to sit in on it.

Q. Do you remember where that conversation took place? A. No, I do not.

Q. Do you remember whether anyone else was present but you and Dr. Page?

A. No, I do not.

Q. What did he say to you and you say to him on that occasion?

A. Well, he simply said he wanted some one of the older men to sit in on it to be sure they didn't get out of line [2140] or do something that wasn't right, to be sure we had good moral backing.

Q. Did he ask you to be chairman of the committee?

A. He had previously, but I told him I had resigned from every office in the medical, state, everywhere else, I was not going to serve in any more offices, let the younger men have a chance.

Q. And then subsequently he asked if you would serve as advisor? A. That's right.

(Testimony of John C. Lyman.)

Q. Did he specify what his concern was that the committee should have a balance wheel?

A. No, just that he wanted that as a safety measure to be sure that we didn't do anything out of line.

Q. And did you consent then to serve in that capacity? A. Yes, sir.

Q. Did he state to you at that time who he was going to appoint as chairman of the committee?

A. I don't believe he did.

Q. And did he state any of the other members he planned to appoint?

A. I don't remember. I couldn't say that.

Q. When did you first learn, if you did, who were the members of that committee?

A. Why, I think when I promised him I would be the advisor. [2141]

Q. And that would be about when, if you recall?

A. I don't know. You have the records, I haven't. I refuse to try to remember any dates five or six years back.

Q. Well, the grievance committee was probably activated around September some time. Would that refresh your recollection at all?

Mr. Kimball: I don't think I would agree with that statement, Counsel.

Q. (By Mr. Sembower): I believe, Dr. Lyman, that one could probably say the committee came into being in April. That was when a motion was passed. Would it have been around about that time then

(Testimony of John C. Lyman.)

that he revealed to you the members of the committee?

A. I don't remember when it was appointed at all.

Q. Did he discuss with you the qualifications of the persons he proposed to appoint to the committee? A. No.

Q. Did you make any suggestions to him, Dr. Lyman?

A. No; not to the best of my memory.

Q. Dr. Lyman, were you ever consulted in your capacity as an advisor to the grievance committee?

A. Well, things were talked over with me, if you call that consultation, yes.

Q. When was the first time, say, that you were consulted [2142] about the activities of the grievance committee?

A. Well, shortly after the hearing, the first hearing.

Q. What first hearing do you have in mind?

A. In regard to the present case we are sitting in on.

Q. Would you say that you were consulted after the October—well, I will strike that question and ask you, Dr. Lyman, if you remember attending the meeting of the society on September 26th in 1950?

A. I wouldn't know. That date wouldn't mean anything to me.

Q. Do you remember attending a meeting on or about that time when Dr. Robinson spoke critically of the grievance committee and referred to a letter

(Testimony of John C. Lyman.)

and referred to Dr. Stevens' conversation with him with respect——

A. I have a faint remembrance of such a thing happening but haven't any idea what the date was.

Q. Were you consulted at or about that time relative to the activities of the grievance committee?

A. I don't remember.

Q. Were you ever consulted, Dr. Lyman, about a letter being sent to a Mrs. Noel Edwards relative to a dollar and a half bill she was protesting?

A. No, sir.

Q. Never had any consultation at all on that?

A. No, sir. [2143]

Q. When did you first learn about that letter?

A. I don't remember.

Q. Do you remember attending a meeting held on October the 10th, 1950?

Mr. Kimball: What date, counsel?

Mr. Sembower: October 11th, 1950, at which a statement was taken from a man named Tom Brooks, Doctor?

A. I think that was the date. I wouldn't know as to the date, but I was there.

Q. Do you recall who got in touch with you and asked you to come to that meeting?

A. No, I don't.

Q. Did the person who got in touch with you and asked you to come to the meeting explain the business of the meeting?

A. I don't know, but they said it was important

(Testimony of John C. Lyman.)

enough that they would like to have me sit in on it. That is all I remember.

Q. And did they specify in any way why they thought it was important enough?

A. Well, they said that in case the point was made, it was a question of blackmail by an individual of our society and they thought I ought to be there.

Q. And that was sufficient for you to decide to attend that meeting? [2144]

A. Well, they asked me to.

Q. Do you know Tom Brooks, Dr. Lyman?

A. Only just meeting him, that's all.

Q. On what occasions have you met him?

A. Oh, I don't know. Certainly not more than two or three times, I would say.

Q. Do you remember in what connection?

A. I had never seen him before that meeting.

Q. But you have seen him since that meeting?

A. Uh-huh.

Q. In what connections have you seen him?

A. Just in passing, that's all.

Q. Beg your pardon?

A. Just in passing, that's all. I have never talked to him.

Q. Did they relate to matters of the society?

A. No, sir.

Q. Were they private business matters of some sort?

A. No, just said howdy do.

Q. I think that Mr. Brooks testified that he had met you twice on business, Dr. Lyman. Do you have recollection of that?

(Testimony of John C. Lyman.)

A. I have no remembrance of that. I have even forgotten what his business is.

Q. Would it refresh your recollection at all if I mentioned that part of his business is making investigations for [2145] insurance companies?

A. No, but I see so many of those that I wouldn't remember any specific one, but that is probably very possible.

Q. Dr. Lyman, do you recall reading a letter written by Dr. Robinson dated August the 11th, 1950, relative to the medical service bureau and criticizing it?

A. I remember that I got one.

Q. Did you read it at the time?

A. I think I did read the first one.

Q. What was your reaction to that letter then?

A. Well, I didn't have much reaction, being that anyone that didn't want to serve in the bureau, it didn't make any difference to the rest of us. As I say, I held out of it, I remember, once myself. It was a matter of free choice whether you wanted to or not.

Q. What did you think of the validity or invalidity of the criticisms which Dr. Robinson voiced in the letter?

A. Well, they didn't get any serious consideration from me. I didn't think they were valuable at all.

Q. Did you discuss the letter with any other doctors?

A. Probably, but I have no remembrance of it.

(Testimony of John C. Lyman.)

Q. Did you discuss the letter with Dr. Balcom Moore, Dr. Lyman?

A. Not to my memory. It is too far back, I don't remember now. [2146]

Q. Did you ever see a copy of the letter or the letter itself that Dr. Moore wrote to Dr. Robinson criticizing, that is, answering Dr. Robinson's letter?

A. I don't think so.

Q. Dr. Lyman, at the time of the October 11th meeting, 1950, before which Tom Brooks appeared and gave a statement, how well did you know Dr. Robinson?

A. Well, I had had several contacts with him professionally.

Q. Had you had any contacts with him socially?

A. I don't know. I remember that he was at our house to dinner, but it seems to me that was after that affair, he and his wife, but I couldn't give you the date on that.

Q. Did you know very much about his background, family antecedents, of any nature?

A. Well, we learned quite a little that night, particularly our wives, I think. They had some things in common.

Q. You are referring to the night when you had dinner? A. How's that?

Q. You are referring to the night when you had dinner together? A. Yes.

Q. Had your professional associations with Dr. Robinson been very extensive?

A. No, but I had seen several cases with him.

(Testimony of John C. Lyman.)

Q. Were you familiar with Dr. Robinson through the activities [2147] of the society and the bureau?
A. Well, not too well, fairly well.

Q. Did you form any opinions relative to the nature of his participation in the society's activities?
A. In the bureau?

Q. Well, in the bureau first, yes?

A. Well, about the bureau, I didn't see any sense of raising any fuss about it, because if he wanted out of it, all he had to do was say so; if you wanted to get back in, all you had to do was apply.

Q. Now, what about the society, did you form any opinions about the nature of his participation in society matters as you observed them?

A. Not particularly.

Q. Dr. Lyman, you attended the meeting of the trustees, I believe, on November the 9th at the Grand Hotel, 1950. Do you recall that meeting?

A. No, I do not. I think it was a meeting after the medical society and I don't think I stayed through it, but I think I was there for a few minutes. But I wasn't there officially at all, anybody could attend that wanted to.

Q. The trustees present, according to the minutes, Dr. Lyman, were Doctors, Page, Tompkins, Keyes and Ralston, and the others present given in the minutes are yourself, [2148] Dr. Johannesson, Dr. Stevens, Judd Kimball, and Mr. Fullerton.

Did you know at that time who Judd Kimball was?

(Testimony of John C. Lyman.)

A. Yes, I have known him ever since he came to Walla Walla.

Q. Did his presence at the meeting on November the 9th, 1950, strike you as unusual or novel in any way?

A. No, not in the light of what they were dealing with. It was one of my recommendations, why, they have a lawyer that they did things according to Hoyle.

Q. Well, do you remember, Dr. Lyman, the nature of the business transacted at the meeting on the 9th?

A. No, I wouldn't remember any of the details, I don't believe. It is too long ago.

Q. Would it refresh your recollection for me to read from the minutes (reading):

“On Motion made by Dr. Tompkins and seconded by Dr. Ralston, it was carried unanimously that an official hearing be held by the board of trustees of the society on the complaint of Mr. Brooks; that Dr. Robinson be served with a copy of the complaint, notified the hearing is to be held, and requested to be present to present his answer, and that the meeting be held in the office of Dr. Ralston, November 21, 1950, at 8:00 p.m.” [2149]

Does that refresh your recollection of the business transacted?

A. I knew that that took place, but whether I stayed through until that happened or whether it was reported to me afterwards, I don't know, but

(Testimony of John C. Lyman.)

I knew it took place. But I couldn't swear as to whether I stayed until that was done or not.

Q. Had you by that night of November the 9th, Dr. Lyman, received a communication or a complaint from Dr. Robinson against the grievance committee?

A. I don't know because I received so many letters that I had a stack about eight inches high and I quit reading them.

Q. Of course, at this time you had not received so many letters, had you?

A. Well, I don't remember when I quit reading them. It is too far back for me to remember.

Q. You did quit reading them at some point?

A. Yes, I did.

Q. Why did you quit reading them?

A. I didn't think they made good sense. It was too much off, irrelative, and so on. I mean, just wandering.

Q. But you don't have any recollection of this letter or complaint that Dr. Robinson prepared, I think under date of November 7th? [2150]

A. Oh, I'm sure I had it, but yet I have no remembrance of any of the detail or anything now.

Q. Dr. Tompkins testified that a copy of that letter was present at that meeting. Do you recall that?

A. No, I do not.

Q. Do you recall any discussion on it?

A. Well, I remember they were discussing the case in general, but as to that, I don't know.

Q. At that meeting on November the 9th, did

(Testimony of John C. Lyman.)

you know whether or not Dr. Robinson had been apprised of the complaint or statement given by Tom Brooks nearly a month ago, nearly a month before that on October the 11th?

A. No, I wouldn't know.

Q. Dr. Lyman, did you attend the meeting called on November the 20th, 1950, upon the petition of Dr. Robinson for a special meeting to consider the grievance committee?

A. I don't know, can't remember.

Q. I find your name among those present in the minutes. Do you recall, Dr. Lyman, such a meeting being held at which the question of continuing the grievance committee was before the house?

A. Yes, I remember that occurred at some meeting, I have forgotten which one. [2151]

Q. And do you remember the vote which occurred there?

A. No, I wouldn't have any remembrance of the vote.

Q. Dr. Lyman, had you given any consideration up to this time to the matter of this committee being started, grievance committee being started, as a so-called secret grievance committee?

A. Well, that was discussed at the time and it was agreed to keep it that way to protect the individual doctors from being phoned to all the time by anybody that had a complaint about their bill or anything, and we thought it reasonable to leave it that way.

(Testimony of John C. Lyman.)

Q. Were you in accord with the proposition that it should be a secret grievance committee?

A. I acceded to it, yes.

Q. Now, Dr. Lyman, by this time of the meeting of November the 20th, wouldn't you say that the grievance committee situation was a pretty snarled up affair?

A. Not to those who knew what was going on, that is, the officers and all I think were all straight on it, and I don't believe there was any question about it with them at all.

Q. Who do you think was pretty straight on it, as you just stated? A. The officers, I say.

Q. Could you specify the officers that you know who were [2152] appraised of the situation?

A. No, because I can't remember any such details.

Q. Would it include Dr. Tompkins?

A. I would certainly expect it to.

Q. Dr. Stevens? A. Yes.

Q. Dr. Keyes?

A. I would think so, but I don't know.

Q. Dr. Pratt? A. I don't know.

Q. Well, now, Dr. Lyman, you stated that it was clear in their minds how it was to function, and so on. What did you mean by that?

A. Well, it is a new project of establishing public relations and it takes some time for a thorough understanding of that to get across to all the members.

(Testimony of John C. Lyman.)

Q. Did you know whether the grievance committee had any set of rules or regulations to guide it?

A. Well, they didn't have until they got started and they didn't get their final orders until later from the state in regard to it.

Q. Do you remember about when that was?

A. No, I do not.

Q. Did you ever consult with Dr. Stevens as to the procedures which he was following? [2153]

A. I don't remember.

Q. Did it ever occur to you that as advisor to the committee, it might be beneficial for you to consult with the committee about this stage?

A. Well, it probably did. I wouldn't have any remembrance of it now after five or six years, I am too old for that.

Q. Do you think you may have consulted with the committee?

A. Very possibly, yes, or with the president of the association, and so on, in regard to it.

Q. Would this difficulty which had arisen, Dr. Lyman, possibly be the sort of thing that Dr. Page had in mind in asking you to serve as a so-called balance wheel?

A. No, it was in regard to any serious decisions, I think.

Q. Would it have made any difference to you through this period in your consideration of the matter if you had known that the first contact on the so-called Edwards-Brooks matter between Dr. Stevens and Dr. Robinson had been Dr. Stevens ac-

(Testimony of John C. Lyman.)

costing him on the street, raising the question with him. Would that have made any difference to you if you had known that? A. No.

Q. Would it have made any difference to you had you known that no meeting of the committee had been convened, as [2154] such, but there had been only a conversation between Dr. Stevens and Dr. Yengling?

A. No, because they certainly would delegate one of them to notify him, probably, or contact him to see if there was really anything up.

Q. Did you make any personal investigation yourself, Dr. Lyman, concerning the matters of the Edwards, so-called Edwards complaint, about the dollar and a half, and the so-called Brooks complaint?

A. Well, I sat in on and heard the hearings, and so on, and I kept versed in whatever action was taken at the time and sanctioned it, yes.

Q. Well, now, at the first hearing where Tom Brooks gave his statement, Tom Brooks was the only one who testified, was that not correct?

A. I am not sure. I remember him, all right.

Q. At that point, it was essentially a question of just Tom Brooks' word against Dr. Robinson's, was it not?

A. Except that we were informed that there was a second party listening in.

Q. And who informed you of that?

A. I suppose Tom Brooks, but I——

Q. Do you recall who he said was listening in?

(Testimony of John C. Lyman.)

A. Some member of the family.

Q. Do you recall the manner in which he said that he was [2155] listening in?

A. I think it was that they had two phones, two extension phones, as I remember.

Q. Did any of the officers or trustees of the society—well, I will put it this way: I suppose then the officers and trustees of the society kept you apprised, did they not, Dr. Lyman?

A. Well, if they didn't, I kept myself.

Q. Well, now, what steps did you take to keep yourself apprised, Dr. Lyman?

A. Well, had a meeting or anything, why, I went to find out what happened.

Q. Dr. Lyman, did you attend the meeting held on November the 21st at which a hearing was held on the Brooks complaint?

A. Is that the same meeting you just asked me about in November?

Q. No, I asked you about on the 20th, which was held the day before.

A. I don't know. Where was this held?

Q. This was held in Dr. Ralston's office.

A. I don't believe I was there.

The Court: That was a trustees' meeting, wasn't it?

Mr. Sembower: That was a trustees' meeting, November the 21st. [2156]

A. I knew about it, but I don't remember that I was there.

Q. Dr. Lyman, do you recall receiving a letter,

(Testimony of John C. Lyman.)

not personally to you, but to officers of the society and other members of the society, from Dr. Robinson dated December the 22nd, 1950, in which he discussed the handling of the Brooks complaint and he contended that an unauthorized reference had been made to the state grievance committee?

A. I think I must have had that.

Q. Dr. Lyman, at this time had you read the constitution and bylaws of the local society with reference to the handling of grievance procedures?

A. I had previously, yes.

Q. Did you read it and consider it in the light of this particular controversy, or was it just a general familiarity you had with it?

A. My general familiarity, yes, sir.

Q. Did you read the constitution and bylaws of the Washington State Medical Association with reference to the grievance procedure?

A. No, I happened to be on the board when that was passed and put into effect and I voted for it, so I was familiar with it.

Q. Dr. Lyman, I don't find your name among those present at the meeting of the trustees held to investigate the [2157] complaint of Mr. Thomas R. Brooks on November the 21st. Was that because you were not a trustee that you were not present or was there any other reason?

A. I was just a member of the society. It was my privilege to go if I wanted to.

Q. Well, did you decide specifically not to go to this meeting, then?

(Testimony of John C. Lyman.)

A. I don't remember, I might have been busy. I knew I would get a report of it afterward.

Q. From whom did you think you would get a report?

A. From the secretary or president or members of it, nothing hidden or secret about that.

Q. Dr. Lyman, were you familiar with the provision in the bylaws of the local society referring to disciplining of members, Chapter III, providing for:

"If the accused person is a member of this society, the Board shall investigate concerning the matter alleged and shall use kindly efforts in the interest of peace, conciliation, or reformation, as far as possible and expedient."

Were you familiar with that provision?

A. Yes, sir.

Q. Did you consider that in connection with this matter?

A. Yes, sir.

Mr. Kimball: If the Court please, this witness said [2158] he was not a member of the trustees. I can't see the point of questioning him, regarding this.

Mr. Sembower: Well, your Honor, I am not asking him as a trustee. These are the bylaws and constitution of the whole society and I am merely asking him if he is aware of this provision.

The Court: Just as a member of the society.

Mr. Sembower: As a member of the society.

The Court: Oh, all right.

Q. (By Mr. Sembower): Dr. Lyman, do you know whether efforts were exerted by the board of

(Testimony of John C. Lyman.)

trustees to use kindly efforts at conciliation or reformation?

A. Very definitely so, as well as the grievance committee members.

Q. Well, now, what efforts were those?

A. Personal efforts, I mean went and talked to him.

Q. Did you make any personal efforts yourself?

A. No. I had no official capacity.

The Court: You are asking him if he made effort as a member of the society?

Mr. Sembower: Yes.

The Court: Well, it wasn't his duty as a member of the society to make any effort under that bylaw.

Mr. Sembower: No, not under the bylaw, but I merely was interested to see whether he himself did make any efforts. [2159]

The Court: Just as a volunteer?

Mr. Sembower: Yes, as a volunteer.

The Court: All right.

A. No, sir.

Q. (By Mr. Sembower): Your answer was no. Did you ever discuss the matter with Dr. Pratt?

A. I think I heard him one morning in surgery make some remarks about it, nothing that I could remember definitely.

Q. Do you recall what those remarks were?

A. Well, he was quite upset because he wanted to get the doctor straightened out, didn't want anything to go wrong with him.

(Testimony of John C. Lyman.)

Q. Do you remember when that conversation took place?

A. No, I couldn't give the date on that.

Q. Dr. Lyman, did you attend the meeting on May 22nd, 1951, at which Dr. Robinson's expulsion was an order of business?

A. Yes, sir, I believe I did.

Q. Did you vote on that occasion?

A. Yes, sir.

Q. Did you vote for expulsion or against it?

A. I did.

Q. Did you after that meeting, Dr. Lyman, attend the meeting held in the Marcus Whitman Hotel, or anywhere else, [2160] at which Dr. Robinson's mental condition was the subject of discussion?

A. I don't remember of any such. Certainly couldn't have been anything official or I would have been notified. I don't remember any such thing.

Q. Would it refresh your recollection at all that a discussion may have taken place at that time for Dr. Pratt to write a letter to Dr. Robinson's father?

A. No, I wasn't at any such meeting.

Q. Did you ever discuss with Dr. Pratt the proposition that he might get in touch with Dr. Robinson's father?

A. I don't believe so. I heard something about it some way or another, but I don't think that it was through him.

Q. Did you hear any other doctors discussing Dr. Robinson's mental health on any other occasion?

(Testimony of John C. Lyman.)

A. Yes, I can't remember any specific instances, but then it was mentioned now and then.

Q. Did you ever hear Dr. Tompkins speak of it?

A. I don't remember.

Q. Did you ever hear Dr. Tompkins state that he was fearful of violence from Dr. Robinson?

A. I don't believe I ever did.

The Court: Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Lyman, you do recall that the [2161] Judicial Council of the American Medical Association reversed the local society and the Washington State Medical Association?

A. Yes, that was simply, purely a technical matter, had nothing to do with guilt.

Q. Did you see the telegram which was dated February 1st addressed to the local society from Dr. Edward Cunniffe in Chicago?

A. No, I did not.

Q. Did you participate in any discussions with the officers or trustees of the local society relative to the recognition or lack of recognition of that telegram as a matter of restoring Dr. Robinson to society membership?

A. Well, I remember that there was some talk about it because we did it.

Q. You did restore him, you say, to membership?

A. Yes.

Q. Do you recall when that was?

A. No, I wouldn't have any idea now. I know it

(Testimony of John C. Lyman.)

was delayed a long time before we got the official thing.

Q. Beg your pardon?

A. I can remember that it was delayed because of waiting for the official thing after this wire.

Q. Did you consult with any of the officers or trustees [2162] relative to the authenticity of the wire or the opinion which was received?

A. Well, I remember talking it over and we decided we couldn't take any action until we got the official thing in writing.

Q. I show you, Dr. Lyman, Plaintiff's Exhibit 206, which is a letter from Dr. Morton W. Tompkins to Dr. E. B. Howard, American Medical Association, and ask you if you have ever seen that letter before?

A. No, I'm sure I haven't.

Q. Dr. Lyman, you stated that the decision of the American Medical Association Judicial Council had nothing to do with the guilt or innocence of Dr. Robinson, is that correct?

A. Yes, sir.

Q. On what do you base that statement?

A. Well, because it was simply a matter of the only thing they criticized was the technical procedure.

Q. And you are basing that on a reading of the opinion of the Judicial Council?

A. Well, and whatever information I got was all to that effect.

Q. What was the source of that information?

A. From the officers that did the corresponding.

(Testimony of John C. Lyman.)

Q. And what officers would those be, if you recall? [2163]

A. Oh, the president or secretary, or both.

Q. Would it be Dr. Tompkins, do you recall?

A. I expect so.

Q. Dr. Keyes?

A. I don't know. Whoever was officially in charge would have been the one that I talked with.

Q. Dr. Howard of the AMA in Chicago in answer to a written interrogatory, Dr. Lyman, stated that it was his recollection that Dr. Tompkins had stated that there was danger that the local society might secede from the AMA over this matter. Do you know of any movement for secession of the local society? A. No, I hadn't heard it.

Q. Beg your pardon?

A. I had not heard of it.

Q. Did you ever hear of it at all?

A. No, never heard of it.

Mr. Sembower: That is all, your Honor.

Mr. Kimball: No cross.

Mr. Rosling: I have just a question or two, your Honor.

Cross-Examination

By Mr. Rosling:

Q. Dr. Lyman, when you were discussing the formative period of the local society's grievance committee and you were [2164] asked as to whether or not rules and regulations had been adopted, I understood you to say, and I am not sure that I caught it correctly, that you had not received orders from

(Testimony of John C. Lyman.)

the state with reference to rules and regulations. Did you use the word "orders" advisedly?

A. I don't remember, but I mean they don't give us any orders, it would be entirely a recommendation, whatever, because they don't order us to do anything.

Mr. Rosling: No further questions.

A. If I used the word, it was misused. [2165]

* * *

May the record show that the deposition of Dr. Pratt is being presented. Dr. Pratt is a defendant in this action.

DEPOSITION OF DR. WALLACE A. PRATT

The deposition states:

That before testifying, the said Wallace A. Pratt was duly sworn by the said Florence Green in all respects as required by law, and the following proceedings were then and there had, to wit: [2166]

Q. Will you state your full name, please?

A. Wallace A. Pratt.

Q. Where do you live?

A. In Portland, Oregon.

Q. Your address there?

A. 2705 S. E. River Road, Portland 22, Oregon.

Q. How long have you lived in Portland?

A. About since September 1st.

Q. Of this year? A. Yes.

Q. Where did you live prior to that?

A. In Walla Walla.

(Deposition of Dr. Wallace A. Pratt.)

Q. You are a former member of the Walla Walla Valley Medical Society? A. I was, yes.

Q. Directing your attention to the period of time between December 14, 1950, and May 22, 1951, did you hold any official position in the Walla Walla Valley Medical Society?

A. I understand I was a Trustee for the period of one year; I just don't remember the dates.

Q. Do you think it could have been during that period of time, that would be in 1950-1951?

A. It may have been.

Q. Is that an elective office? [2167]

A. Yes.

Q. By the membership? A. That's right.

Q. Were you a member also of the Walla Walla Valley Medical Bureau? A. Yes, I was.

Q. And what was the Medical Bureau, Dr. Pratt?

A. It was an organization of doctors here to handle welfare work and also prepaid medicine—medical care.

Q. Do you remember when that was formed?

A. No, I couldn't tell you exactly.

Q. Did you by any chance participate in the formation of it? A. Yes, I was there.

Q. Could you approximate the date when it was formed? A. It was previous to 1950.

Q. Would it be possibly 1949?

A. It may have been, yes.

Q. Dr. Pratt, as a Trustee of the Medical So-

(Deposition of Dr. Wallace A. Pratt.)

ciety, were you aware of the existence of a Grievance Committee in the years 1950 to 1951?

A. I was.

Q. Was this a secret Grievance [2168] Committee?

A. Yes, it was, as far as I know. I didn't know who the men were on it, myself, until afterwards.

Q. Did any of the members of the Society know the composition of this Committee?

A. Yes, some of them did.

Q. Who would those be?

A. Well, the men appointed to the Committee would know.

Q. And who appointed the Committee?

A. I think Dr. Sam Page.

Q. And what was his position?

A. I think he was the President of the Society.

Q. Did the Trustees discuss the formation of this Grievance Committee prior to its creation?

A. I think they delegated that selection to Dr. Page; I believe so.

Q. Do you recall how the matter of creation of such a Grievance Committee was raised?

A. How was it determined?

Q. No, how did it come about?

A. I think on the medical scenes there were certain changes occurring in medical economics and the securing of State medicine and so on, [2169] and they thought that they would set up an organization to offer services to the public to counteract the entrance of any more State medicine, that was the

(Deposition of Dr. Wallace A. Pratt.)

object, I believe, and offer these services by local physicians to the community.

Q. How did medical economics figure in the creation of such Committee?

A. Well, you understand if state medicine were to come about it would probably end up with all the men being on salary, you see, under the jurisdiction of the government, state or Federal, and that they did not like very well.

Q. How would a Grievance Committee figure in that situation?

A. Well, the Grievance Committee, as I understood it, was to take care of trivial matters coming up in the community with respect to accounts. There might be some dispute between patients and doctors in the amount charged, and the thought was instead of having it go on to litigation if they could arrest these things by getting the parties together and settling the matter.

Q. Did this idea of such committee [2170] originate locally? A. I doubt it very much.

Q. Where do you think the suggestion—

A. I think there was some description of a grievance committee in the AMA Journal, and it was generally being promoted, I thought, throughout the country by medical societies and had the endorsement of the AMA.

Q. That was the major reason why the local Medical Society created it?

A. To keep up in the profession and take care of the disputes in that way.

(Deposition of Dr. Wallace A. Pratt.)

Q. How did it happen that it was formed as a secret committee, if you know?

A. For instance, if the public were to know that the Medical Society had three doctors favorable to appeal that everyone would be sending in complaints and it would be a general nuisance to the Society and the Committee. They wanted them to be neutral. They didn't want the public, or even the doctors themselves, to know who was on the Committee, they thought.

Q. Why didn't they want the doctors to know who was on the Committee? A. Why? [2171]

Q. Yes, why didn't they want the doctors to know?

A. Well, I don't know. They just thought it better to have an impartial group to refer these matters to, impartial as regards to the profession generally.

Q. Did the idea it be a secret committee originate locally?

A. I think not. I think it was suggested by Dr. Page. He thought that would be the best way to handle it, and I think it was generally approved but I don't think any vote occurred. I think they just elected Dr. Page to select a committee. I think he was given that option.

Q. You mean the Trustees gave him that option or the membership?

A. The membership, I believe. I may not be right about that.

Q. Dr. Pratt, do you know Dr. Miles H. Robin-

(Deposition of Dr. Wallace A. Pratt.)

son, the plaintiff in this action? A. I do.

Q. When and where did you first meet Dr. Robinson?

A. I met him, I believe, in Walla Walla.

Q. Do you remember about when?

A. It must be way back in the middle forties somewhere. [2172]

Q. Do you remember under what circumstances?

A. It may have been during the war. I am not certain about that.

Q. Do you remember under what circumstances you met him, who introduced him to you or anything of that sort?

A. No, I can't say. I imagine it was Dr. Campbell, but I am not sure about that.

Q. Dr. Robinson was suspended from the Walla Walla Valley Medical Society, was he not?

A. He was.

Q. Do you remember about when that was?

A. I think that was somewhere in 1951, I am not sure.

Q. Do you remember any of the particulars of that suspension? A. Yes.

Q. Was the suspension ever discussed by the members of the Trustees?

A. Well, I don't believe I was on the Board of Trustees, but I imagine it was.

Q. But you were not on the Board at the time it was discussed? A. No.

Q. Dr. Pratt, referring to the transcript of the [2173] hearings which were held before the Washington State Medical Society, I find on page

(Deposition of Dr. Wallace A. Pratt.)

99 this statement by Dr. Yengling—I beg your pardon, page 51—Dr. Yengling said, “Throughout this entire episode every member of the Medical Society has tried personally to cease and desist from saying anything. Finally I went to his close friend, Dr. Wallace Pratt, and he had a long talk with him and he wouldn’t arbitrate, and he tried to get him to settle and he wouldn’t arbitrate in any way whatever.” Dr. Pratt, when did Dr. Yengling talk to you about arbitrating this matter with Dr. Robinson?

A. I imagine it was just about that time previous to the suspension, sometime before that. I cannot give you the date.

Q. Do you remember where the conversation took place? A. I don’t; no.

Q. You did have a conversation with him about it, however?

A. Well, now, probably did. I do not remember exactly, but I probably did.

Q. Do you remember what he said to you and what [2174] you said to him about it at that time?

A. No, but I may say that I said I would exert my best efforts to quiet the matter and see if I couldn’t see Dr. Robinson and have some adjustment or desist from——

Mr. McNichols: Mr. Kimball interposed here. Does the Court want the colloquy of counsel?

The Court: Beg your pardon?

Mr. McNichols: Does the Court want the discussion between counsel?

(Deposition of Dr. Wallace A. Pratt.)

The Court: I think not unless counsel wishes to have it.

Mr. Kimball: There is very little, I suggest you read it straight through.

Mr. Kimball: You are referring to the conversation Dr. Pratt had with Dr. Robinson?

Mr. Sembower: Dr. Yengling.

Q. You said "to desist from." What did you have in mind to desist from?

A. From opposing the action of the Medical Society through its Grievance Committee. I thought they handled it fairly well. It was my opinion at that time they did their best to settle this original little dispute, as I considered it to be. [2175]

Q. What dispute was that?

A. Over some dollar-and-a-half business; a matter of an account.

Q. Dr. Pratt, were you familiar with the provisions of the Constitution and bylaws with reference to disciplining a member? A. No.

Q. You were not familiar with that?

A. Well, I knew there were such provisions but I hadn't taken steps to read them.

Q. At this time when you talked with Dr. Yengling, were you—you hadn't formed any opinion then whether the procedure spelled out by the Constitution and bylaws for disciplining had been followed or not?

A. No, I didn't. I thought the whole matter was absolutely trivial. I couldn't understand the difficul-

(Deposition of Dr. Wallace A. Pratt.)

ties that ensued over a small matter of a dollar-and-a-half.

Q. Were you aware of any other difficulty that was existing between Dr. Robinson and the Society at this time? A. Yes.

Q. Did you have the same belief about that, it was a trivial matter? [2176]

A. Yes. Yes, I thought the whole approach was a mistake.

Q. You say the "whole approach"?

A. The whole approach on the part of Dr. Robinson was ill-taken, that it was his duty to cooperate with the Medical Society, and instead of that he was opposing them, publicly and in every other way, and I thought he was on the wrong track.

Q. Did you think he shouldn't deny that he was guilty of these charges?

A. Why, I suppose personally he would be disposed to deny such things. Naturally a man would be on the defensive; anyone would.

Q. Did you inquire to determine whether the Executive Secretary had written any letters to outsiders about these matters? A. No, I didn't.

Q. You were not aware of that at the time?

A. No; no.

Q. Of course, as a matter of fact, it developed that when the disciplinary action was reviewed it was found that the Society hadn't followed its procedures in the Constitution and bylaws; was that not a fact? [2177]

A. Well, I am not sure about that. I heard some-

(Deposition of Dr. Wallace A. Pratt.)

thing to that effect. I heard something to that effect.

Q. If you had known at the time you talked with Dr. Yengling that these procedures had not been followed, would that have changed your attitude toward what Dr. Robinson was doing at the time?

A. No, I don't think it would.

Q. You think he should have co-operated even if they weren't followed?

A. Absolutely; absolutely. Doctors are, as a rule, very busy men, and it is my opinion they do not read all this matter that comes through and they are not conversant with the technicalities altogether, you see, and if they were to be reading all the literature that comes out they wouldn't have much time to practice or follow out their duties, because there is a great deal of it.

Q. You wouldn't deny that a disciplinary action is a matter of great consequence to the doctor against whom it is brought?

A. No, I would not.

Q. Wouldn't that justify his deep concern [2178] about it? A. His concern?

Q. Yes. A. Yes, I should say so.

Q. And if he was innocent shouldn't he declare that point? A. Why, yes, of course.

Q. Wasn't Dr. Robinson at this time protesting his innocence? A. Yes, I believe he was.

Q. If procedures are provided for in the Constitution and bylaws they should be followed, should they not? A. I would say so, yes.

Q. And if they are not being followed, wouldn't

(Deposition of Dr. Wallace A. Pratt.)

you say that the doctor involved should protest that? A. I think he had a perfect right to.

Q. Well, now, do you have any views as to why Dr. Yengling asked you to arbitrate this matter?

A. Yes. I think that generally the different men in the profession sensed something different had shown up, something irregular, and had taken such a virulent form they were greatly [2179] disturbed about it and didn't think it would be to the credit of the profession to have one of its members circularize these papers, and they thought the sooner the matter was set at rest, the better for all, including the doctor.

Q. Did Dr. Yengling make any suggestions to you as to what you might say to Dr. Robinson for a basis for settlement?

A. No, he left that with me, as near as I can remember.

Q. You did have then a conversation with Dr. Robinson? A. Yes.

Q. When and where did you talk with Dr. Robinson about it?

A. Well, I talked with him one time in my office and another time he came to my residence and we talked in the yard about it, in the garden, and we sat there and talked about it and I tried to point out to him the futility, as I understood it, of proceeding with this whole matter.

Q. What did you mean by the "futility"?

A. Why, I thought it was absurdity to go on over [2180] such a small matter and create so much

(Deposition of Dr. Wallace A. Pratt.)

disturbance and upset everyone, and he thought he was right and that he would prevail in spite of all circumstances. He thought the whole medical profession needed reforming and that he would go the limit, one opposed to one, from the top to the bottom, he would never quit until he had brought about certain reforms. He thought he had grandiose ability in such a matter, and I sensed right away this was extraordinary, positively something different.

Q. You mean different from——

A. Yes, yes. This chap who purported to be the center of a reform movement or something of that sort, and he would go to the State authorities, and he would go through the AMA itself; there was something rotten in the kingdom and he was out to clear it up.

Q. Well, now, you stated a moment ago, I believe, you weren't aware at this time that the Constitution and bylaws procedures as to disciplinary matters had not been followed?

Mr. Rosling: You were assuming a fact which is not evidence and which we know is not [2181] true. The Constitution and bylaws were followed in this case, Mr. Sembower, and I don't like to have you assume in a question a fact which has not been proven to be true.

Mr. Sembower: That is still the position of the State Society in spite of the decision of the Judicial Council of the AMA?

Mr. Kimball: Why, certainly.

(Deposition of Dr. Wallace A. Pratt.)

Mr. Sembower: Do you still take the position you followed it accurately?

Mr. Kimball: Certainly, and I am surprised you express any doubt.

Mr. Sembower: I am surprised, after talking to Dr. Cunniffe, that the State Association still adheres to its opinion.

Mr. Kimball: We thought we were right, and we still do.

Mr. Sembower: Do you recognize the AMA decision as being the final law on that question? That is what I am relying upon. I wouldn't want to presume at all, Mr. Rosling, but I had a ringing in my ears the opinion of the AMA Judicial Council——

Mr. Rosling: The local society abided by [2182] the decision of the AMA and reinstated Dr. Robinson, but if you ask my opinion, the AMA decision was clearly erroneous.

Mr. Kimball: And I agree with that statement.

Mr. Sembower: I will not try to confuse the witness any more than I am confused by this failure to abide by the opinion of the Judicial Council.

Mr. Kimball: We abided by it but we do not think it is correct.

Mr. Sembower: Well, all right. I will pass that point then because obviously we are all confused on that.

Q. (By Mr. Sembower): Now, Dr. Pratt, after you talked with Dr. Robinson, did you then report back to Dr. Yengling?

(Deposition of Dr. Wallace A. Pratt.)

A. No, I don't think I did.

Q. Did he ever ask you the results of your efforts to arbitrate the matter?

A. No, I don't think so. I don't recall that he did.

Q. Just let it go at that? A. Yes.

Q. Well now, an arbitration presumes a give-and-take procedure? [2183]

A. I don't remember the term "arbitration" being advanced. I was to offer my offices in trying to dissipate this idea Dr. Robinson had, as far as I could, and rest the matter.

Q. Well, I did pick up the word "arbitrate" from Dr. Yengling. He may not have used that when he was talking to you?

A. No. No, there was to be no arbitration, as I recall.

Q. But you felt the whole matter was absurd?

A. Yes, positively so.

Q. You felt it was absurd on the part of Dr. Robinson?

A. Yes, I thought his whole assumption throughout was a mistake, utterly mistaken. He seemed to be possessed. There seemed to be some frustration that triggered him off—"this is all wrong, I am right and I am going to show them that I am right, see, and I will leave no stone unturned in order to do so."

Q. Did you feel it was absurd on the part of the Society?

A. No, I couldn't see how they could function

(Deposition of Dr. Wallace A. Pratt.)

and have a man saying the things that Dr. Robinson was saying publicly and in writing, [2184] how the Society could carry on its work. It couldn't prevail.

Q. You thought it was absurd for Dr. Robinson to object to a grievance over a dollar and fifty cents, but you didn't feel it was absurd for the Society to raise the grievance, or did you think the whole thing was absurd?

A. The society didn't raise this particular grievance. This was raised by the parties who received the account of \$1.50. The dispute was brought to the Grievance Committee of the Society, as I understand it.

Q. Were you aware that the Executive Secretary of the Society wrote the grievant and said they were recommending that that bill not be paid?

A. I didn't know at the time until afterwards it came out that he did so.

Q. Would that have changed your attitude?

A. Not a bit. The whole matter to me was just simply unheard of. I couldn't believe it could take such form.

Q. Dr. Pratt, did any medical society ever write a client of yours and tell them not to pay their bill, in your whole experience? [2185]

A. No, I don't recall that they did.

Q. Do you feel it would be a proper procedure for a society to do that without having a hearing?

Mr. Kimball: May I interject this remark? You say "tell a patient not to pay his bill." I object to

(Deposition of Dr. Wallace A. Pratt.)

that if you are referring to the letter of September 30th. It does not say that.

Mr. Sembower: What does the letter say?

Mr. Kimball: It is in evidence. Maybe you had better read it.

Q. (By Mr. Sembower): Looking at the letter, Plaintiff's Exhibit 248, the letter states, Dr. Pratt, in the last paragraph—it starts out: "Dear Mr. Edwards: Your complaint against Dr. Robinson has been investigated by the Grievance Committee——"

Mr. Rosling (Interrupting): Not Fullerton's report, their report.

Mr. Sembower: That's right.

Q. (Continuing): "In this case, however, since there was a misunderstanding regarding the prescription, the Grievance Committee feels that the best interests of all concerned should [2186] be to drop the matter leaving the bill of \$1.50 unpaid, especially since the little patient seems none the worse for her experience." Wouldn't you infer that that was, to say the least, a suggestion to the patient not to pay the bill of \$1.50?

A. I believe so. It isn't a directive and it isn't compulsory; it is merely a suggestion to quiet this matter, and I thought it was not out of the way. They wanted to help, you see. The Committee were acting in good faith. They were not conspiring against Dr. Robinson or anything. That is what I say, the whole approach——

Q. Do you say that of your own knowledge?

A. Yes.

(Deposition of Dr. Wallace A. Pratt.)

Q. On what do you base the statement?

A. Because I know all the men on that Committee and I know these men were acting in the best of faith and that they were not disposed in any way to injure Dr. Robinson. That wasn't the idea.

Q. Did you talk to them about it?

A. No, I think not.

Q. That is, you just base that on your [2187] assumption, is that correct?

A. Yes, I read the letter afterwards. When it began to create so much comment I read the letter and I thought, "Well, now, that isn't bad." If I had a patient and was having trouble with the patient over \$1.50, or \$150.00, and to get it out of my hair I would thank the Committee for sending such a letter to get it out of the way.

Q. And your opinion wouldn't be changed if there was a hearing held about the matter, at which time you were questioned as to whether this bill was justified?

A. It was such a small amount to precipitate all this business, it was simply ridiculous—simply ridiculous, and the Committee are busy men, they are acting in good faith, they didn't want to hurt Dr. Robinson or these people either. I would thank the Committee if they sent such a letter to me, and that is the difference in one man's method of thinking and another one's.

Q. Now, of course, your statement these men were acting in good faith is based on your surmise, is that correct? [2188]

(Deposition of Dr. Wallace A. Pratt.)

A. Well, of course, my judgment in the matter.

Q. Not based on any direct conversation you had?
A. No, that's right.

Q. Now, Dr. Pratt, a moment ago you were saying that Dr. Robinson was disposed to carry this thing to the highest authority and all that. Did you feel he was unreasonable about that?

A. Very; positively unreasonable.

Q. Did you form any opinion?
A. I did.

Q. What was your opinion?

A. I thought the man was possessed with a fixation of persecution and was uncontrollable, not amenable to reasoning whatever. I got nowhere with him. He had this big, big idea he could reform the whole profession.

Q. You thought he had delusions of grandeur?

A. I did—yes and no. Delusions of grandeur—I will say it is in a sense a delusion when a man is utterly mistaken in his premise and proceeds to feel he is elected to do a—make a reform or revolution in the handling of medical problems.

Q. Did you feel he was verging on insanity?

A. No, I didn't feel that at the time. I [2189] was thinking about him, but I think he is a very clever man in other matters, but he was so systematic and persistent, I thought that man is gripped by some ideas that he was utterly incapable of disposing of.

Q. In other words, you thought he was crazy on that point?

A. On that point, yes, off the beam. On that

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point, but on other matters very nice, charming man at times and quite reasonable, and I thought a lot of their family. I knew them, not too well, but fairly well.

Q. Well, Dr. Pratt, would a person who would try to reform a procedure in the Medical Society be, in your estimation, demented for attempting that?

A. No.

Q. What do you think would justify an attempt to reform the procedure of a medical society on the part of a member of it?

A. I am all for reform when I consider it necessary. I am very pleased to say that I would admire anyone that would try to correct the fault anywhere that was quite obvious—a fault. That is all right; that is all right. [2190]

Q. Dr. Pratt, as a matter of fact, you did write a letter to Dr. Robinson's father, didn't you?

A. I did.

Q. When did you write that letter, do you recall?

A. Oh, it was shortly after the dismissal from the Medical Society, I believe. I do not remember just when, but it was shortly after that.

Q. How did you come to write that letter?

A. Well, I had met Dr. Robinson's father and stepmother and, of course, his family, and I felt sympathetic toward them, and I thought, "Here this man has a son who I think is——"

Q. Abnormal, is taking steps that are abnormal?

A. And irregular and may lead to a great deal of trouble, and for my absolute sympathy for his wife,

(Deposition of Dr. Wallace A. Pratt.)

his children and his father, I thought I would write and tell him some of the circumstances ensuing toward this decision and ask him if he couldn't come out or do something to straighten Miles out.

Q. Dr. Pratt, as a matter of fact, you wrote this letter on May 24, 1951, did you not?

A. I wouldn't say. It may have been then.

Q. I have a photostatic copy of the letter [2191] here.

Do you recognize the letter?

Mr. Kimball: It isn't a complete copy. Is there an explanation for the part cut out?

Mr. Sembower: Some of Dr. Robinson's memoranda were on there, but the letter itself is intact.

Mr. Tuttle: If there is another piece of the letter here, why don't you put the whole letter together?

Mr. Sembower: There is a note.

Mr. Rosling: Will you read it, Mr. Sembower, and express your opinion?

Mr. Sembower: There are three names to whom copies were sent and his own file number, one word I can't read but not part of the letter itself.

Mr. Kimball: Do you mean copies of that letter were sent by Dr. Pratt?

Dr. Robinson: No, copies were sent to various members of my family.

Mr. Kimball: By whom?

Dr. Robinson: By my father, I presume.

A. I think that the letter is the letter I wrote, a copy of it. Yes, I would say so. You can see in there

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that I was acting as a friend in [2192] every way and for Miles and to the family; I felt very, very badly about it.

Q. (By Mr. Sembower): This was, as a matter of fact, written just two days after his suspension?

A. It may have been. I don't remember the date of the suspension. However, I would say that impressed my feelings very much.

Q. Well now, when had you met Dr. Robinson's father?

A. Oh, I imagine a year or two before that.

Q. About a year before that?

A. Oh, maybe two years, but previously.

Q. On what occasion did you meet him?

A. I think we met at our home, and out at Miles' home out on the farm out here.

Q. On those two occasions how long did you visit with Dr. Robinson's father?

A. Not very long. We had casual conversations of a pleasant nature.

Q. What other members of the family had you met?

A. Well, I met Dr. Lewis Robinson's wife, and there were some other friends, I do not remember their names. I think they were friends of Mrs. Miles Robinson, or possibly [2193] relatives.

Q. Did you consider them close personal acquaintances? A. No, not that way.

Q. Did you exchange Christmas cards with them, for instance?

(Deposition of Dr. Wallace A. Pratt.)

A. Well, I hardly think so. We may; I hardly think so.

Q. What did you have in mind that your letter would accomplish, Dr. Pratt?

A. Why, I just thought that I was unable to influence Dr. Robinson in any way, that I thought his father might do so, you see. Knowing Miles all his life, that he might do so.

Q. This letter was written two days after his expulsion. The matter had been pending for some time prior to that? A. What matter?

Q. The matter of the disciplinary action was pending for some time prior to his expulsion?

A. Oh, I think so; probably was.

Q. Did you get in touch with Dr. Robinson's father at any time during the pendency of the matter? [2194] A. Never; no.

Q. Wasn't it a little late to write his father after he had been expelled?

A. Well, I didn't think—I didn't know it would come to that—expulsion. I didn't sense that. I thought he would be disciplined in some way but I didn't—If it had been late, I wish I had written it sooner now after the turn the matter has taken. Maybe I should have written the father six months before or a long time before.

Q. You stated a moment ago you didn't know expulsion was imminent?

A. No, I thought there would be——

Q. You were a Trustee, were you not?

(Deposition of Dr. Wallace A. Pratt.)

A. Not at this time; I don't think I was. I may have been, but I don't think I was.

Q. At any rate, you were a member?

A. I was a member of the Medical Society.

Q. Had you received any notice of the impending expulsion?

A. No, no. I think that was—no, we have a lot of meetings and I didn't know when that was coming up, exactly.

Q. Isn't it a fact, Dr. Pratt, that you had [2195] a conversation with Dr. Robinson right after the expulsion? A. I did.

Q. Just to refresh your recollection, Dr. Pratt, I am looking at a copy of the minutes of the meeting of the Board of Trustees of the Walla Walla Valley Medical Society held down at the Marcus Whitman Hotel, May 15, 1951. A. Yes.

Q. And I count among the members present your name, so you must have been a Trustee at that time? A. I was a Trustee?

Q. Yes; members present in meeting of the Board of Trustees. A. That was in 1951?

Q. Yes. That was just seven days before the expulsion. A. Yes.

Q. But you had no notice of the expulsion?

A. Not that I recall. I don't recall that I did.

Q. When you talked to Dr. Robinson, didn't Dr. Robinson in his conversation with you after the expulsion indicate that he was going to file [2196] suit? A. No.

Q. In the courts?

(Deposition of Dr. Wallace A. Pratt.)

A. No. I will tell you what he did say. It was dark, we were on our way out to the car and I said, "Miles, this seems to be it." "I have just begun to fight," he said. I remember the words, "I have just begun to fight." And then we got in our cars.

Q. Did that conversation impel you to write this letter?

A. Probably had some bearing on it, yes. I could sense then he was committed to everlasting fight.

Q. And you didn't want him to carry on an everlasting fight?

A. No, no. I thought, "How foolish."

Q. What could he do now? What could he have done at that point under the Society's rules?

A. Why, he could have—if he had retracted some of the remarks he had made and the statements he had made in these numerous letters and offered to co-operate in the affairs and business of the Society, they would have remanded any such action, I am quite sure.

Q. Why would they have done that? [2197]

A. Because they didn't want to hurt anyone, that wasn't their particular purpose, but to carry on the functions of the Society they could not tolerate this continual fighting and these remarks, and every doctor was receiving great long letters that were published over a good part of the State, and all the local profession got these letters until I had a pile nearly an inch and a half high.

Q. That wasn't the reason for his expulsion, was it?

(Deposition of Dr. Wallace A. Pratt.)

A. I think probably—I don't know.

Q. You think that was the real reason for his expulsion?

A. No, I am not saying it was the real reason. No, the reasons are probably given in the decision.

Q. But you think if he hadn't written these letters that might have been overlooked?

A. No, his conduct other than that was sufficient to convince the members of the Medical Society that they could not tolerate someone upsetting the Board in the Society, wrecking the Society, making disparaging remarks about the Society and the Committee and the officers, a [2198] continual——

Q. Against the Bureau?

A. Oh, yes, he said—inferred that Fullerton, the secretary, was in collusion with someone in Seattle and they were ganging up against him, and he was assuming all this, in my opinion. It was a perfect—well, it was all a mistake. He was possessed, as I have said before, with the wrong approach to the whole thing.

Q. You think, in other words, if he had just apologized about these particular incidents there would have been no trouble?

A. Why, of course. All these people have troubles of their own. They buy homes on time, they have families, they can't stand to be worried about such matter and threats as Dr. Robinson was advancing. They have troubles——

Q. You mean the doctors have troubles?

A. Yes, the doctors have troubles of their own,

(Deposition of Dr. Wallace A. Pratt.)

and we can't have a Society and have a man kicking over the traces in a manner he was doing. It was utterly absurd.

Q. In other words, they didn't feel Dr. Robinson [2199] was a menace to society because of the \$1.50 bill he charged?

A. No, but his attitude was a menace to the Society, decidedly.

Q. How do you mean, a menace?

A. A menace because he was writing letters, derogatory letters throughout the State. We had a whole stack of them, and highly critical of their actions and how they do things. He was out to reform. He was out to change the whole——

Q. And they didn't want a reform?

A. ——the whole foundation. Oh, I wouldn't say. As you know, they are not disposed to be static, the medical profession.

Q. Many of these letters related to the Medical Bureau? A. Yes, I presume so. Yes, they did.

Q. Did the doctors resent that?

A. Yes, of course, they did. That is their Bureau and many entered the Bureau, or if they ever did it was their obligation to co-operate with it and make it a success. But not him; oh, no he was out to wreck it. He said, "They are all wet." [2200]

Q. He resigned, as a matter of fact?

A. Yes.

Q. And they resented that?

A. They wouldn't—you understand there is a certain, you might say, accumulated earnings are

(Deposition of Dr. Wallace A. Pratt.)

divided among the men and the fewer doctors, the more there would be for the individuals left, so there would be no objective in making the doctors disappointed over his going out, because we have had other doctors that didn't belong, a few here, but most of them—I should say 90 or 95 per cent belong.

Q. Well, what did you hope, Dr. Pratt, that your letter to Dr. Robinson's father would accomplish?

A. I was hoping he would come out and quiet Miles down. I thought he was up in the air and off the beam on this, and I thought probably the father could do more than anyone else.

Q. You were the logical member of the Society to write the father? A. Yes, I think so.

Q. Did you think any other members of the Society were going to write him? [2201]

A. Oh, no. I don't think they ever knew his father or where he lived.

Q. Did Dr. Yengling mention to you that you might write Dr. Robinson's father?

A. Not that I recall.

Q. He may have? A. He may have.

Q. Did any other doctors suggest you might write his father?

A. They may have. I think I maybe said that I—in order to help out, that I would write his father and see if something couldn't be done.

Q. When did you say that?

A. Oh, sometime about that same time.

Q. You mean to a group of doctors?

A. No, not a group; just any individual.

(Deposition of Dr. Wallace A. Pratt.)

Q. You talked about it?

A. Not very much.

Q. Who talked? A. I do not recall.

Q. Might have been the other members of the Board of Trustees? Dr. Carlson maybe?

A. It may have been.

Q. Maybe Dr. Tompkins? [2202]

A. I think not.

Q. Dr. Page? A. It may have been.

Q. Mr. Fullerton may have discussed it with you? A. No, I think not.

Q. In the old State suit, Dr. Pratt, a deposition was taken of Dr. Carlson and he made the statement in response to Dr. Robinson's question, "This discussion over my father, was it held in a meeting, formal or informal, of officers, including yourself?" and Dr. Carlson said, "Yes, I would say that." Then he was asked, "Do you recall what meeting it was held in?" and he says, "Well, it seems to me it was in a meeting of Board of Trustees in the Marcus Whitman Hotel. I don't recall when." I suppose you might have mentioned in the Board of Trustees you were going to write to his father?

A. I may have. I don't recollect.

Q. And they suggested to you that you write?

A. They may have. I would say that regardless of the Board of Trustees, I felt so alarmed at his conduct that I probably would have written on my behalf because I thought of the [2203] family and their welfare and also the welfare of his own family and himself, because I was very much perturbed.

(Deposition of Dr. Wallace A. Pratt.)

Q. Why were you so perturbed?

A. His action was irregular, abnormal, and I was alarmed.

Q. Had he ruined himself as a professional man?

A. Yes, any man that would take it in hand to right a whole profession and was going to reform it from here to elsewhere, even to the headquarters of the AMA, I thought, "This man has big ideas."

Q. How did you think it might hurt him and his family?

A. I thought, "Doctors are not going to take that lying down. They are going to resent these disparaging remarks."

Q. What did they do?

A. You can see what they did. They went ahead here and dismissed him from the Medical Society.

Q. What did that do to him?

A. Well, that gets him out of the Medical Society.

Q. And what happens then?

A. Well, he is out of the Medical Society. [2204] He can practice in the town, but he is not a member of the Medical Society and that is our representative body and we all try to conform to its rules and regulations and try and keep the profession up to a good, high standard, and as a rule we get the cooperation of nearly all the men in it. Now and then someone—it is just like the law profession, you have men who don't adhere to the ethics of your profession.

Q. You say in this letter "In view of the situa-

(Deposition of Dr. Wallace A. Pratt.)

tion as it stands, Mrs. Pratt and other doctors feel that Miles is suffering from some persecution complex, at least of that nature, and it is expedient that he be persuaded to drop the feud and devote his talents, which he undoubtedly has, to his work." Now, how did you happen to mention Mrs. Pratt?

A. Why, Mr. Pratt was a friend of the Robinson family and thought a great deal of Mrs. Miles Robinson and the children. When I would come home from some of these meetings late at night she would say, "Why were you there so late?" "Well," I said, "they kept on arguing and [2205] talking and I couldn't get away." "Well, what was it all about?" "Well, it is about Miles Robinson, and he seems to think the men are ganging up on him or trying to get him out of town or something else, and seems to feel he is being persecuted, they are plotting against him, and he is mistaken." "Well," she says, "that is terrible"—you know, just like that. She said, "That is too bad he is acting that way." So that is the reason I stated that because Dr. Robinson's father had met Mrs. Pratt and we were fairly well acquainted—not extremely well, but fairly well.

Q. You said, "and other doctors." Whom did you mean there? A. Well, I meant——

Mr. Kimball: Let him see the letter you are reading from so he can get the context of it.

Q. (By Mr. Sembower): The third paragraph from the end.

A. Why, I meant other doctors, generally speaking.

(Deposition of Dr. Wallace A. Pratt.)

Q. All of them?

A. Yes, generally speaking, in the sense of the Medical Society. Yes, that is what it implies. [2206]

Q. What did you mean when you said, "suffering from some persecution complex"?

A. That was founded on the nature of his attitude. He spoke to me on the street one day and he said he wasn't going to have any grievance committee or Society interfering with his patients or what he is charging them, it was a base miscarriage of his rights. He said he wasn't going to tolerate the Medical Society determining what he was going to charge his patients, they had no right to do it and he was out after them.

Q. Did you think he was demented?

A. I think he was suffering from a persecution complex, and I think he was utterly mistaken, disillusioned about that matter about the profession trying to hurt him.

Q. Well, as a matter of fact, he was expelled, wasn't he? A. Yes.

Q. He wasn't mistaken about that, was he?

A. Not much, no.

Q. Did you hear any discussions about perhaps holding a sanity hearing?

A. No, never. [2207]

Q. Anybody discuss with you the possibility of two doctors joining to—— A. No.

Q. ——to certify to his mental condition?

A. No, no.

Q. What was the effect of this letter?

(Deposition of Dr. Wallace A. Pratt.)

A. The letter—Dr. Robinson's father answered the letter.

Q. Do you have a copy of that answer?

A. I haven't it with me. All my papers are in Portland.

Q. We have no copy of that letter. We could serve a subpoena on you, but I suppose you would have no objection to counsel presenting a copy of that letter to us?

A. Well, it isn't available here now. I just came up from Portland and I left all my things down there.

Mr. Sembower: Could you get us a copy of that letter?

Mr. Kimball: Yes, if he could find it we will be very glad to furnish a copy of that letter.

Mr. Sembower: I will appreciate it.

A. I can give you the substance of the letter.

Q. What was the substance of it? [2208]

A. He was greatly upset and grieved and I sensed the father felt things had broken loose again, this was a recrudescence of former stormy periods in his life—this is an assumption on my part. He thought Miles was finally nicely settled and things would go along nicely, and here he goes again with something else, and he said, "I am very, very sorry," and he said, "but I am unable to come out owing to my health which is very bad, but," he said, "I will have my son Walter, an attorney in Vancouver, get in touch with you."

(Deposition of Dr. Wallace A. Pratt.)

Q. Did he indicate he thought maybe Miles Robinson's mind was breaking?

A. Well, if you want to ask my opinion, I would say that might be the proper assumption, that the father just says, "Huh." I am just assuming the father was greatly upset, to think his son was off on another binge or sorts, whatever it was.

Q. Did you ever write the father again?

A. Never.

Q. Never communicated with him again at all?

A. Never.

Q. Did you think he had drawn perhaps an exaggerated [2209] conclusion from your letter?

A. The father?

Q. Yes. A. Not at all.

Q. You thought his inference would be a reasonable one from your letter?

A. Yes, I thought so, because he must have to communicate with the brother in Vancouver.

Q. And, of course, you do know the father changed his will with reference to Dr. Miles Robinson? A. I had heard that afterwards.

Q. When did you hear that?

A. Oh, sometime afterwards, many months probably.

Q. Well now, he said he would have Dr. Miles Robinson's brother get in touch with him?

A. He did.

Q. Did his brother get in touch with him?

A. He did.

Q. When did that occur?

(Deposition of Dr. Wallace A. Pratt.)

A. Sometime—oh, I don't know, maybe a few weeks after I received—

Q. You had a conversation with him?

A. I did.

Q. Where did the conversation take place?

A. In Walla Walla. [2210]

Q. Who was present?

A. Just the two of us, Dr. Robinson's brother and myself.

Q. What did he say to you and what did you say to him?

A. We said plenty. I don't think I can recall it, but I can give you the substance of that.

Q. Tell us in substance.

A. Oh, he says he couldn't—I said, "Can you straighten Miles out?" He said, "Doctor, I am the last man. We just don't get along too well together; we do on a good many things, but ever since I married again the second time Miles thinks I am the next thing to a sinner," and something else and something else, "and I am sure I can't get anywhere with him," but he says, "I tell you, Father is just all broken up about this," and at a later time I saw him and he said, "Father has decided to change his will, he is so offended at Miles' action." So, well, I sort of hear all this and I didn't know, it was out of my jurisdiction, but the brother further stated, he said, "Dr. Pratt," he says, "I would give ten thousand dollars right now to have this thing settled and out of [2211] the road, get Miles quieted down."

(Deposition of Dr. Wallace A. Pratt.)

Q. Did you tell him how you thought he might get it settled?

A. I don't know. I can't say that I could give a solution.

Q. Did he ask you what might be done?

A. I don't recall that he did.

Q. Had he seen a copy of your letter to Dr. Robinson's father?

A. Not that I know of, but the Doctor may have enclosed the letter, I don't know; I imagine so. I imagine the father would do that.

Q. You must have explained to Dr. Robinson's brother what the trouble was, did you not?

A. Oh, yes. We talked about it.

Q. What did you tell him you thought the trouble was?

A. Just as I have stated in my previous deposition here; Miles was off the track on this thing and was completely mistaken in considering that the Medical Society was, or any of the members were conspiring to defeat him or injure him in any way. I said it was altogether mistaken.

Q. Did Dr. Robinson's brother tell you his father [2212] wasn't well? A. Yes; he did.

Q. Did he tell you this was affecting his health?

A. No; he said, "Father is not sufficiently well to take any part in this," and he said—he asked me to see if I could do anything about it.

Q. But you didn't get in touch—of course, you testified a moment ago you never got in touch with Dr. Robinson's father again directly? A. No.

(Deposition of Dr. Wallace A. Pratt.)

Q. Only through the brother?

A. That's right. [2213]

* * *

(The reading of the deposition of the defendant, Wallace A. Pratt, was resumed as follows:)

Q. You said on another occasion you saw the brother. When was that?

A. I saw him in Vancouver. I was on vacation in British Columbia and we came down through Seattle and I dropped in to see him in his office.

Q. Do you remember when that was?

A. No; I can't say. It was a considerable time after that.

Q. Had the brother asked you to come see him?

A. Oh, yes. He said, "If you are ever down that way, drop in." He said, "I would like you to see our home." But I didn't go to the home; it was late in the afternoon I caught him in [2214] his office.

Q. How long were you with him?

A. An hour and a half, I judge.

Q. It was on this occasion he told you Dr. Robinson's father was going to change his will?

A. Yes.

Q. Was there anything else you remember about that conversation? A. No; no.

Q. Did you tell any of the other doctors you were going to stop in to see him when you were up there?

A. No.

Q. Did they know you were on a vacation to Canada at that time—any other doctors?

(Deposition of Dr. Wallace A. Pratt.)

A. Not that I know of. They probably knew I was out of town.

Q. And that is the last time you saw his brother?

A. Yes.

Q. Did you have any phone calls from his brother that you haven't told us about?

A. I can't recall.

Q. Any letters from him?

A. Oh, yes. [2215]

Q. Letters from him? A. Yes.

Q. And did you write him?

A. Yes; I answered them; yes.

Q. Do you have those letters in your files?

A. Not here.

Q. At the office?

A. No; they are not here.

Q. At home?

A. Well, my papers are all boxed up in Portland.

Q. Well, now, will you go through those papers and get those letters out and have copies made for us? A. Well, that would be quite——

Q. If you want us to serve you with a subpoena, we will, but it means more of your time and more of our time, but we will do it because we want to see those letters very much.

A. Well, if I can. It is quite a job. All those boxes have never been uncovered. You see, I had to make different shipments from the office and the home. We broke up our home September 1st and

(Deposition of Dr. Wallace A. Pratt.)

the office and I had to send a lot of stuff to Seattle and Portland.

Q. What would you say was the substance of those [2216] letters with his brother?

A. It was just keeping him informed as to what was transpiring here, as near as I can recall.

Q. What did you tell him was transpiring?

A. Well, I said, "Miles is taking legal steps of different kinds," and as everyone knew, he had been to numerous lawyers in Walla Walla and Spokane, had been to counsel in different places and they, after looking into the matter, would throw it overboard. But that didn't stop him. He decided he knew a good deal more than the lawyers about this thing. He was in law libraries pouring night and day, firing letters out to the profession.

Q. How do you know about this?

A. I heard it.

Q. Who did you hear it from?

A. Someone; I can't tell you who.

Q. You mean you can't remember?

A. No; I can't remember.

Q. Dr. Tompkins?

A. No; I can't remember. I very rarely talk with Dr. Tompkins.

Q. And you told these things to Dr. Robinson's brother. How many letters did you write to [2217] him about it?

A. Oh, I can't tell you. I am sure not many. Maybe three or four, as near as I can judge.

(Deposition of Dr. Wallace A. Pratt.)

Q. And he replied to them? A. Oh, yes.

Q. And what did he say, in substance, to you?

A. Well, I can't recall any more than we were completely stymied. We couldn't do anything with Miles. He was on a mission and he wasn't going to be inflected.

Q. What did you want to do with Miles?

A. To quiet him down. We didn't want to be bothered with this law business, with prosecutions and all that, nor do we now. This is a kind of imposition on the medical profession, this whole business, and unnecessary—totally unnecessary. There isn't an iota of basis for the start of this thing, any more than this man has a persecution complex, we will say, and is possessed with a grandiose idea he has a mission to perform and he is going to win a victory somewhere, and if he ever did, he would have another one. He would be restless; he can't stop, he can't stop. I feel sorry for the man. He certainly isn't in [2218] a state of—his emotional state must be in a constant state of tension. You can judge from all this. This isn't the practice of medicine, this is anything but. This man has a lot of ability and if he were to apply it where he could, he would do a lot for humanity.

Q. Now? A. Yes; he could.

Q. Where?

A. Anywhere he would settle down.

Q. Here?

A. He goes from place to place, and everywhere

(Deposition of Dr. Wallace A. Pratt.)

he is trouble starts. He is suspicious of [2219] everybody.

* * *

Cross-Examination

By Mr. Rosling:

Q. In your testimony, Dr. Pratt, you referred to the fact that Dr. Miles Robinson had been in trouble at various times throughout his career. In your conversations with any of the members of his family have you been advised of any incidents or character traits of his boyhood years?

A. Well, of course, I only talked with his brother. The brother said that he had had.

Q. That he——

A. That Miles had been temperamental or something of that sort, and even as a boy he had tantrums, and he said they had to put him in [2222] a straight jacket, he was so uncontrollable. I remember that distinctly, his brother telling me that.

Q. There is already in evidence, Dr. Pratt, some difficulty at Pennsylvania Hospital and some difficulty in taking the basic science examinations in Oregon. Are you aware of any other incidents in the life of Dr. Robinson?

A. One time when we were discussing some of these things, Miles and myself, he was telling me at Louisville, Kentucky—I believe he was there for a while—that things were pretty rotten there and I don't think he was successful in cleaning that mess

(Deposition of Dr. Wallace A. Pratt.)

up there, whatever it was, I don't recall, but it was certainly badly out of order at Louisville, Kentucky.

Q. Any other incidents in any other part of the country that you have knowledge of?

A. I can't recall. Let's see, my memory does not reveal at this time any other circumstances than about the whole matter of the action with the Society; they took great offense at his dispute with the Brooks people, they were convinced that he had threatened them in some way to reveal the nature of some [2223] disease he purported to have.

Q. That occurred in Walla Walla?

A. That was in Walla Walla, and they thought he was distinctly unprofessional in that matter.

Mr. Rosling: That situation we are familiar with. I have no further questions, Dr. Pratt.

Cross-Examination

By Mr. Smith:

Q. Doctor, I represent St. Mary's Hospital in this proceeding, which is named as a defendant. I would like to ask you if it isn't correct that you were on the staff of the hospital at the time of these matters here we are discussing? A. I was.

Q. Did you happen to be on the Executive Committee at the time Dr. Robinson was declared no longer eligible for membership?

A. I don't recall whether I was or not.

Q. Were you present at a meeting when action was taken by the staff? A. No.

(Deposition of Dr. Wallace A. Pratt.)

Q. You were not?

A. No; not as a staff. No; I don't recall anything of that nature. [2224]

Q. It is your recollection, is it not, that the staff did recommend to the authorities of the hospital that Dr. Robinson's membership on the staff be cancelled?

A. No; I may say that I was out of touch with that episode or that action. I wasn't identified with it in any way.

Mr. Smith: That is all. Thank you.

Mr. Kimball: We have no questions.

Redirect Examination

By Mr. Sembower:

Q. I would like to ask one or two more questions, Dr. Pratt, about Dr. Robinson's prior troubles. As I understood, you just testified that you heard from his brother he was in a straight jacket at one time, but that members of the family had not told you about any of his other prior troubles?

A. No.

Q. Where did you learn about those other prior troubles?

A. Well, partially from Miles himself at Louisville—I believe it was Louisville. He told me that he couldn't tolerate the conditions there, they weren't above-board, [2225] or something, there was always something out of line.

Q. Who told you about the Pennsylvania Hospital incident?

(Deposition of Dr. Wallace A. Pratt.)

A. I can't recall, I am sure.

Q. But you did learn about those?

A. Only very indirectly, someone intimated—I don't know who, even—that he had had trouble.

Q. Some doctor told you? A. I believe so.

Q. Maybe at a convention?

A. Maybe; I can't say, but I just heard.

Q. Would it be a convention of the Washington State Medical Association? A. No; no. No.

Q. What about a convention of the AMA?

A. No.

Q. Have you gone to those conventions?

A. Yes; I have.

Q. When did you attend those conventions?

A. I was to one about two years ago, to the State. We never discussed this matter at all, though.

Q. Did you go to the State convention in [2226] 1951? A. I think not.

Q. Did you go to the AMA convention, by any chance? A. No.

Q. Where did you learn about the Oregon examination matter?

A. I didn't know anything about that.

Q. I am sorry, did you know anything about that?

A. I had heard that not so very long ago, just before I left for Portland, something about him.

Q. But you didn't know anything about that at this time?

A. No; nothing whatever. I knew that he was in Portland, that he lived there for a while before he

(Deposition of Dr. Wallace A. Pratt.)

came to Walla Walla, and I judged he was practicing in Oregon, I didn't know. I didn't know anything about that and didn't see fit to inquire into it, but he was located in Portland, at least living there, and I assumed he was practicing in Oregon. If he didn't have his license, he probably wasn't practicing there.

Q. Did you ever talk with any officials of the State Association about your conversations [2227] with Dr. Robinson?

A. Never; never to my recollection.

Q. Or did you ever talk to any of them concerning this correspondence with his brother?

A. Never to my recollection; no.

* * *

MILDRED L. PHILLIPS

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Mildred L. Phillips.

Q. And where do you reside, Mrs. Phillips?

A. 115 East Rose.

Q. Are you employed anywhere?

A. Not at this time, sir. [2228]

Q. What is your age, if I may ask?

A. I was born in 1886, April the 23rd.

(Testimony of Mildred L. Phillips.)

Q. Mrs. Phillips, were you a subscriber to the medical bureau when Dr. Robinson first took care of you as a patient? A. Yes; I was, sir.

Q. Did you go to Dr. Robinson for medical treatment in 1950? A. I did.

Q. Had you been taking medical treatment for some time previous to that from other doctors before you went to Dr. Robinson? A. Yes; I had.

Q. What did those doctors treat you for?

A. Well, I don't know.

Q. What did Dr. Robinson find wrong with your health?

A. He found a condition, a urinal condition.

Q. Would that be a kidney condition?

A. Yes.

Q. Did Dr. Robinson have you save specimens from the kidney for him?

A. Yes, sir; he did.

Q. Did you improve, get better, under Dr. Robinson's treatment?

A. Indeed, I did, sir. [2229]

* * *

Q. I hand you Plaintiff's Exhibit for identification No. 516, Mrs. Phillips, and ask you if you have seen this before?

A. Yes, sir. I wrote this check.

Q. And what is that check?

A. That check is to Dr. Miles H. Robinson, M.D., amount is \$17.00.

Q. Do you recall the purpose of that payment?

(Testimony of Mildred L. Phillips.)

A. Well, I was notified that I was responsible.

Q. When you say you were notified, are you referring to the Plaintiff's Exhibit which you just read, the letter?

A. I am referring to the letter from the medical bureau.

Mr. Sembower: I ask that Plaintiff's Exhibit 516 be admitted. [2231]

* * *

Q. (By Mr. Sembower): How does it happen that you paid Dr. Robinson directly instead of the bureau paying this bill, Mrs. Phillips, if you know?

A. As I remember, I was notified by letter.

Q. Did the bureau give you any reason why you should pay this yourself, rather than the bureau?

Mr. Kimball: If the Court please, she stated she received a letter and I think that is the best evidence.

The Court: Are you asking if there was any other communication?

Mr. Sembower: Yes.

Q. Let me ask you, was there any other reason than was stated in the letter by any representative of the bureau why you were to pay this yourself?

A. I do not remember.

Q. Did any employee or representative of the bureau ever talk to you about the diagnosis of your health condition?

A. Not to my remembrance. [2232]

* * *

RALPH S. KEYES

a defendant herein, was called as an adverse witness by the plaintiff, was examined, and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Will you state your full name, please, Dr. Keyes? A. Ralph S. Keyes.

Q. And what is your residence address?

A. 520 Bridge Street, Walla Walla.

Q. And you maintain an office in Walla Walla?

A. Yes.

Q. Where is your office located?

A. Drumheller Building.

Q. You are a physician, Dr. Keyes?

A. Yes.

Q. Are you a general practitioner?

A. Yes. [2233]

Q. Do you practice by yourself or with others?

A. By myself.

Q. Now, Dr. Keyes, were you a member of the Walla Walla Valley Medical Society at the beginning of 1950? A. Yes.

Q. When did you join the society or its predecessor? A. Shortly after I came to town.

Q. When was that? A. 1941.

Q. And you commenced practicing medicine at that time? A. Yes.

Q. What offices have you held, Dr. Keyes, in the Walla Walla Valley Medical Bureau—Medical Society?

(Testimony of Ralph S. Keyes.)

A. I have been a secretary and trustee and a president.

Q. Have you held any offices in the organization we refer to as the Bureau? A. Yes.

Q. What offices there?

A. I have forgotten.

Q. Have you held offices in the Washington State Medical Association? A. No.

Q. And you are a member of the AMA?

A. Yes.

Q. During the calendar year 1950, Dr. Keyes, what was your [2234] official capacity with the society? A. Secretary.

Q. And as secretary, were you a trustee?

A. Yes.

The Court: When were you secretary, did you say? A. 1950.

The Court: Oh.

Q. (By Mr. McNichols): And you were trustee all during 1950? A. Yes.

Q. And did you hold any office during 1951?

A. No.

Q. And then, as I recall, you were president of the society during 1952, is that correct?

A. That is correct.

Q. Now, there was a meeting held, Dr. Keyes, on the 11th of October, 1950, at which Thomas Brooks made a complaint against Dr. Miles Robinson. I notice from the minutes it appears that you weren't present at that meeting. Do you recall whether you were or not? A. I was not there.

(Testimony of Ralph S. Keyes.)

Q. You were not present. Do you recall whether or not you were requested to be present?

A. Yes; I was.

Q. Did other duties require you to be elsewhere?

A. That is correct. [2235]

Q. When then, Dr. Keyes, did you learn the details of this complaint which Mr. Brooks had made?

A. As far as I can recall now, I learned the details when I heard him make the complaint on November 21, 1950, at 8:00 o'clock in Dr. Ralston's office.

Q. That was the regular hearing before the trustees?

A. Yes; that is the only thing I can swear to. Now, I might have known about it before, but that is all I can swear to.

Q. If at any time you wish to refer to the minutes of the various meetings, you just say so.

Now, there was a meeting of the trustees with respect to the Brooks complaint on the 9th of November, 1950, do you recall offhand?

A. The night of November what?

Q. November 9th, 1950?

A. November 9th.

Q. Just a moment, I will let you see the minutes. These were the minutes of the meeting of the board of trustees held on the 9th of November, 1950, and contained in Defendants' Exhibit 447.

A. Oh, this was when Judd Kimball was there. Yes; I recall that. It was a short meeting after the regular society meeting.

(Testimony of Ralph S. Keyes.)

Q. And that meeting was held apparently at the Grand Hotel? [2236]

A. Yes, yes; I recall that.

Q. Was it customary for you to hold your meetings somewhere other than St. Mary's, a trustees' meeting?

A. Oh, there was no customary place for holding trustees' meetings, as I recall.

Q. You held them whenever you were requested to appear? A. That's right.

Q. Some were held at the Marcus Whitman, some at the Grand Hotel, some at other places, were they? A. That's right.

Q. How were these meetings set up? Were you just notified at the society meeting that there would be a later trustees' meeting?

A. Oh, for instance, this one here, as I recall, during the meeting it was asked that the trustees meet afterwards. In other words, there was no prior notice of it.

Q. You are speaking of the meeting of November 9th?

A. This November 9th one, that's right.

Q. Is that the meeting at which Mr. Kimball appeared? Also, I notice Dr. Stevens was present at that meeting. Do you know how he happened to be there?

A. No; I don't, but anyone could be present who wanted to be and I suppose he figured he had an interest in it.

(Testimony of Ralph S. Keyes.)

Q. Did you adjourn as a group to the Grand Hotel, or—— A. We were there. [2237]

Q. Oh. This was a special meeting, I notice. The society didn't meet at the hotel, did it?

A. Yes.

Q. Oh, they did?

A. If I am not misinterpreting the meeting, why, that was the one, the trustees' meeting followed the regular society meeting.

Q. Now, you indicated that meeting of November 9th was quite short. How long would you say it lasted? A. Oh, an hour.

Q. Was that short for a trustees' meeting?

A. Oh, very short.

Q. How long did your meetings normally last, the trustees' meetings?

A. Oh, from about 1950 to 1951, why, they were lasting three and four hours.

Q. Now, you were apprised of the Brooks complaint at the meeting of November 9th, were you not? A. Does it say so in the minutes?

Q. Well, yes. A. Well, if it does, we were.

Q. If you wish to refer to the minutes. Do you recall what discussion there was at that meeting after refreshing your memory from the minutes with respect to the Brooks complaint? [2238]

A. What is your question now, please?

Q. Do you recall any discussion at that meeting about the Brooks complaint?

A. Unless you ask some specific question, I don't.

(Testimony of Ralph S. Keyes.)

Q. Well, do you remember Mr. Kimball reading the prepared complaint?

A. I know he read something and I suppose that is what it was.

Q. Well, prior to that meeting, Dr. Keyes, did you even know that there had been a complaint registered against Dr. Robinson? A. Yes.

Q. How did you learn that?

A. When I was asked to be present in the bureau office at 5:00 o'clock at that time that you previously asked me if I were there and I said I was not.

Q. Oh, I see. Were you aware of what was going to occur at that meeting?

A. I was aware that there was going to be a complaint made which had potential of serious trouble in it.

Q. Did you know that it was going to relate to Dr. Robinson?

A. I am not positive whether I was apprised of that or not.

Q. The meeting we have just referred to was the meeting of October 11th which you didn't attend?

A. That's right. [2239]

Q. Did you at any time during this period direct or request Mr. Fullerton to communicate with the state association with respect to a state grievance committee? A. Did I?

Q. Yes.

A. Well, I trust you understand that being a secretary of the society involved no more than any other trustee. I mean, that is a nominal title, that

(Testimony of Ralph S. Keyes.)

we employed this executive secretary to do the work, and I had no more duties than to get the speakers and I was no more than a trustee, actually, so just because I am secretary doesn't mean that I directed the executive secretary to do something.

Q. No; I was merely asking you, I wasn't implying it. I will show you Plaintiff's Exhibit No. 23—

A. We are in 1950 now, are we?

Q. 1950, I am referring to Plaintiff's Exhibit 23, which is dated October 16, 1950, a letter from Mr. Fullerton to Mr. Neill of the state association.

A. Now you are asking if I directed him personally or as a member of the board of trustees to write this letter?

Q. In any respect, if you recall; yes?

A. I don't recall anything about this; no.

Q. Do you know anyone else who directed him to write that letter? [2240]

A. Well, I am sure if he wrote it, why, he was asked to write it by the board of trustees as a group, but to ask me if I recall voting on something like that, why, no; I don't.

Q. He wouldn't have written it on his own volition?

A. No.

Q. Now I show you Plaintiff's Exhibit 24, which is a letter from Mr. Neill to Mr. Fullerton, obviously in answer to the letter of October 16th, and ask you if you have seen that before to your knowledge?

A. No; I don't recall seeing that.

Q. Do you know whether that was ever pre-

(Testimony of Ralph S. Keyes.)

sented to the board of trustees for their consideration? A. I don't recall one way or the other.

Q. Now, Dr. Keyes, do you remember receiving a copy of Dr. Robinson's complaint against the grievance committee which was lodged with the board of trustees?

A. I'm sorry, I didn't hear.

Q. To refresh your memory, I will show you Plaintiff's Exhibit No. 37, which is a communication to the board of trustees of the Walla Walla Medical Society from Dr. Robinson dated November 7, 1950, and ask you if you recall seeing that document or a copy of it before?

A. Just one that we were all—is this one that we were all circularized with? [2241]

Q. Well, it was directed to each member of the board of trustees. You were on the board of trustees at that time.

A. Well, I must have seen it, but whether I read it or not, I don't recall.

Q. Do you recall receiving it?

A. Want me to read the whole thing to see if I can remember?

Q. No, no; I just thought it might refresh your memory if you glanced at it.

A. I don't recall ever seeing it.

Q. Do you recall ever discussing the contents of this document at a meeting of the board of trustees?

A. Discussing the contents of that letter with the board of trustees?

Q. Yes; Dr. Robinson's complaint against the grievance committee?

(Testimony of Ralph S. Keyes.)

A. Well, we discussed many things in those days. I just can't recall whether we discussed that letter or not.

Q. Well, then, Dr. Keyes, I will refer you to the trustees' meeting of October 24th, 1950. Along that line, were you familiar during this period with the so-called Edwards complaint which had been made against Dr. Robinson?

A. The dollar and a half? [2242]

Q. Yes. A. Yes.

Q. Who had apprised you of that, do you remember? A. No; I don't.

Q. You were present at the meeting of the board of trustees held on the 24th of October, 1950, were you not? A. It states that I was.

Q. Do you recall the discussion which is indicated in these minutes with respect to the local grievance committee?

A. Yes; I recall that there were rules set up as far as the grievance committee would act.

Q. Were those promulgated as a result of the difficulty that arose over the Edwards complaint? For your information, the Edwards complaint was disposed of approximately a month before that.

A. No; as I recall, this was in line with something that was started back in April of that year and that was just to further set up the grievance committee because it was still in the formative stages. I don't recall that we had any special meeting, you know, something special to go into it because of the Edwards complaint.

(Testimony of Ralph S. Keyes.)

Q. You feel it is more of a coincidence than the net result? A. That's right. [2243]

Q. Then you were present, Dr. Keyes, I believe you stated, at the meeting of the trustees which was held on the 21st of November at which Mr. Brooks again reiterated his complaint? A. Yes.

Q. Did you hear all the testimony at that meeting? A. Yes; I did.

Q. From the time you first heard of the Brooks complaint, did you ever communicate with Dr. Robinson in any respect between that time and the time of the 21st of November hearing?

A. Well, weren't we working together at the penitentiary then, Miles?

Q. Well, if you remember.

A. Well, I mean, gee, we saw each other every day as far as I know.

Q. I will put it this way: Did you ever mention to Dr. Robinson that this complaint had been made by Mr. Brooks? A. Sure.

Q. When; do you recall?

A. I recall in the parking lot at St. Mary's.

Q. Do you know approximately when it [2244] was?

A. I don't even know what year it was, but I know I talked to him about it.

Q. Was that shortly after you learned about the complaint? A. I suppose.

Q. What did you say to him at that time?

A. To the best of my recollection, I can't recall anything I said. I know I talked to him about a

(Testimony of Ralph S. Keyes.)

complaint that was being made. I wanted to know if—well, I had heard through the grapevine that this disease that Mrs. Brooks was supposed to have had was not substantiated by other examination by other doctors and I asked him if he had heard of that.

Q. And what did he say?

A. I have forgotten.

Q. But you had a general discussion with him about it? A. That's right.

Q. Did he indicate to you that that was the first time he had heard anything about the Brooks complaint?

A. No; I think he knew about it before. It might have been I might have told him, the first one, but I doubt it.

Q. Well, to your knowledge, had he ever had any formal notification at that time?

A. Well, now, you see, I can't even recall when it was I talked to him in the parking lot and—I don't know. [2245]

Q. The November 9th hearing of the trustees, Dr. Keyes, do you believe or do you think it was just a coincidence that Doctors Lyman, Johanneson, Stevens and Judd Kimball were there?

A. I think that they must have had more than passing interest in it or they wouldn't have taken the time to stay.

Q. But none of those were trustees at that time?

A. No.

Q. How many of the trustees' meetings, if you recall, did you have an attorney present?

(Testimony of Ralph S. Keyes.)

A. I beg your pardon?

Q. How many of the meetings of the trustees do you recall at which there was an attorney present for the society?

A. You mean prior to November 9th or after that up to the present?

Q. Prior to that time.

A. Prior to November 9th? I don't recall his being present on any occasion prior to that.

Q. Were you present at the meeting of the society on the 20th of November, 1950, the night before the trustees' hearing? To refresh your memory, that was the meeting which was called at the request of Dr. Robinson.

A. The night before the trustees meeting over in Ralston's office? [2246]

Q. Yes. A. Does it say I was there?

Q. I don't know.

A. Yes; here is my name. Now, what was taken up?

Q. That was the meeting at which the motion was made whether or not the grievance committee should be continued and also whether a letter should be written to the Edwards withdrawing the former letter.

A. No; I don't recall that. I have heard about a close vote and I don't recall anything about that.

Q. But your name appears there, you were likely there, however?

A. Apparently so, unless I was called out early.

Q. You don't remember what occurred?

(Testimony of Ralph S. Keyes.)

A. No; I don't.

Q. Do you recall how you voted on the grievance committee?

A. I don't think I was there when the vote was taken.

Q. Oh, I see.

A. If I had been there, I would have voted to continue the grievance committee.

Q. Pardon?

A. Had I been there and voted, which I don't think I was, I would have voted then and would still have voted to continue the grievance committee.

Q. Did you know at that time that the grievance committee [2247] had never established any rules of procedure?

A. Whether they had ever established any rules of procedure?

Q. Yes?

A. I knew it was in the mill. I don't think there was definite rules adopted until later on the next year.

Q. Did you attend the annual meeting that year, Dr. Keyes, on the 14th of December?

A. Is my name there as being present?

Q. Well, I thought you would remember the annual meeting. Here are the minutes.

A. Yes.

Q. Yes; you were there? A. Uh-huh.

Q. Do you recall the discussion at that meeting about the grievance committee? You might want to refresh your memory briefly.

(Testimony of Ralph S. Keyes.)

A. Where does it say about that? Down here?

Q. No; it says: "Doctors Stevens, Robinson, Pratt, Keyes, Lange and Smith spoke on the motion." A. And the motion was what?

Q. The motion, I believe, was whether or not the letter should be sent to the Edwards. That is the motion that was tabled and amended several times.

A. This has to do with sending the letter to the Edwards? [2248] You mean that dollar and a half letter?

Q. Yes; do you recall that incident?

A. And I spoke on it?

Q. If you don't recall——

A. Well, I recall of getting up at some meeting. And now whether this is the one or not, and I had been in favor of Dr. Robinson to have his say, and so on, and I know I got up in a meeting and I thought I was pretty cute, you know, and so I brought up that I didn't want to be in the position of a rat leaving a sinking ship, but I certainly felt that Dr. Robinson had made a misstatement of fact, and whether I called him a liar in public or not, I don't know, but I certainly was a little exorcised about something he had said. What it was right now——

Q. You were somewhat violently opposed to him at that time, were you? A. Yes.

Q. And then did you attend the April 22nd meeting of the state grievance committee in 1951?

(Testimony of Ralph S. Keyes.)

A. April 22nd meeting of what?

Q. Of the state grievance committee held at the Marcus Whitman Hotel on April 22nd.

A. That was on a Sunday?

Q. I believe it was; yes. [2249] A. Yes.

Q. Did you remain present throughout that meeting? A. Yes.

Q. Did you hear the testimony that was presented there? A. Yes; I did.

Q. You had also heard the testimony that was presented at the trustees meeting, had you not, on November 21, 1950, the hearing on the Robinson matter? A. Yes.

Q. Did you at that time observe that the testimony of Noel Edwards with respect to what was said to him by Dr. Robinson differed in those two meetings?

A. I'm sorry, I can't hear very well.

Q. Oh. Do you recall Noel Edwards testifying at the meeting of November 21, 1950, before the board of trustees, the son-in-law?

A. Yes; I recall his being there.

Q. Do you remember his testifying at the April 22nd meeting before the state grievance committee?

A. Not specifically.

Q. Did you attend the so-called expulsion meeting on the 22nd of May, 1951, at which time Dr. Robinson was expelled? A. Yes; I did.

Q. Did you hear Noel Edwards testify at that meeting? [2250] A. Yes, yes; I did.

Q. Did you at that time observe any differences

(Testimony of Ralph S. Keyes.)

in his testimony of the various occasions that he testified? A. No.

Q. Do you recall what transpired during the May 22nd meeting when Dr. Robinson was out of the room? That is the expulsion meeting I am referring to.

A. Yes; whether I recall it or it has been brought to my mind by minutes, and so on, and talking with lawyers, and so on, since, but a motion was made to the effect that he be suspended for six months and then someone else made a motion that he be expelled.

Q. Do you recall any discussion of the second motion?

A. Well, when, for instance, when Dr. Kincaid was on the stand and mentioned that Walter Cowan had spoken for moderation and I recalled that then, and if you asked me a specific question, I might be able to answer, but just to pick it blank, I can't.

Q. Do you recall Dr. Tompkins getting up and talking? A. Well, he presided at the meeting.

Q. How about Dr. Page?

A. And Dr. Page always talks at every meeting.

Q. Did he get up and talk in favor of the motion to expel? A. I believe he did. [2251]

Q. Do you remember what he said, in substance?

A. No, I don't; but, of course, I know what he meant now. I mean, I know he felt if we just suspended, he would be back in the society in six months and we would have no chance to look him over, so to speak, in the meantime, and that if we

(Testimony of Ralph S. Keyes.)

expelled, then he could reapply at the end of the year, and then if we weren't satisfied that he had changed his attitude any and was still going to feel as he did then, why, we still didn't have to take him back in, but if we suspended, we would have to take him back in.

Q. In other words, you wanted to be certain you had control over him at the end of the year?

A. That's right.

Q. What did you mean by his attitude, Dr. Keyes?

A. Well, if he still felt that he had been acting according to the ethics, threatening to use a club over someone's head unless they came across, and so on, if he still felt that was right.

Q. What is this club? What did you refer to as a club over someone else's head?

A. Well, you know, the Edwards threat.

Q. Are you using the term figuratively?

A. Yes.

Q. In other words, was it Dr. Robinson's criticisms of the [2252] grievance committee and his criticisms of the bureau that you had in mind?

A. No; it was—well, the word "blackmail" has been used before. It was that sort of tactics that we had in mind; that he had never denied that he had threatened the Brooks and the Edwards family with this revealing privileged information, and so on, he had never denied.

Q. You had never heard him deny it?

A. Beg pardon?

(Testimony of Ralph S. Keyes.)

Q. You had never heard Dr. Robinson deny that he had threatened them?

A. I had heard him deny that he had threatened them, but he never came out and said he had refused to—that he had never come out and said that if you didn't give me that letter, I would reveal the nature of your disease to your family and to the health authorities. He had never denied saying that.

Q. You have heard Dr. Robinson's explanation of his position on it, then, had you?

A. Oh, yes. I had that at that November 21st meeting.

Q. And he had denied any threat, had he not?

A. He denied using a threat, but nevertheless he never denied just what I went through. In other words——

Q. Well, then, you felt that even assuming that the statement that Dr. Robinson made with respect to his position [2253] on the Brooks matter were true, that he still should be expelled?

A. Well, I say he never had denied saying that if you didn't get the letter, he would reveal the nature of the disease to the Edwards family and also to the health authorities, public health authorities. He never had denied that.

Q. Well, in your activities. in your voting on this matter, were you acting on the assumption that he never had denied such a thing?

Mr. Kimball: The witness has answered the question.

A. That was part of it.

(Testimony of Ralph S. Keyes.)

Mr. Kimball: The witness has answered the question two or three times.

Mr. McNichols: I don't recall him answering that question. I asked him what he had in mind when he took the action.

The Court: What was the last question?

(The question was read.)

The Court: Do you understand what the question is? A. Yes, sir.

The Court: All right, you may answer. Objection overruled.

A. That was taken into consideration, certainly.

Q. (By Mr. McNichols): Well, you, as a matter of fact, Dr. [2254] Keyes, and the other doctors were quite incensed about Dr. Robinson's general behavior during this time, weren't you?

A. Certainly.

Q. You were disturbed by the fact that he was writing letters concerning the grievance committee and had written letters concerning the bureau?

A. Oh, we didn't care how many letters he wrote. We didn't care what he said, but we hated to take up all of our time for evenings on end, three and four hour meetings about this whole thing. Certainly, we were annoyed with it.

Q. What meetings are you referring to now?

A. Oh, gee, we had meetings galore.

Q. Are you referring to the meeting you went to on the 21st of November?

A. Oh, we had meetings all the time, two or

(Testimony of Ralph S. Keyes.)

three meetings a month, business meetings, and so on, on this thing, and sure it annoyed us.

Q. Didn't Dr. Robinson call only one meeting himself?

A. I don't know, you can answer that better than I.

Q. Do you know of any other meeting that he instigated?

A. Well, he instigated about—as I say, two or three a month of lengthy meetings just because of this whole thing. I mean, this wouldn't have been precipitated [2255] if it hadn't been for Dr. Robinson in the first place.

Q. Oh, you mean the meetings were called by yourselves but they referred to Dr. Robinson?

A. Sure, certainly.

Q. Well, he had nothing to do with calling those meetings, did he?

A. Well, no; he wasn't an officer in the society.

Q. Well, then——

A. And even a meeting that he might request would still be called by an officer of the society. He wouldn't call a meeting and get us there because we wouldn't go if he called the meeting.

Q. Did you feel——

A. Have to be requested. I beg your pardon?

Q. Did you feel that that was an imposition upon yourself and the other members to have to attend these meetings?

A. Oh, wouldn't you get tired of going out every

(Testimony of Ralph S. Keyes.)

evening and spending three or four hours in a meeting three and four times a month?

Q. Well, now, take the October 11th meeting at which Mr. Brooks made his first complaint. Was there anything Miles Robinson could have done to prevent that meeting?

A. October 11th, I wasn't there. [2256]

Q. That was the meeting you testified you were called to and couldn't attend?

A. Yes. And your question was?

Q. Was there anything he could have done to prevent that meeting or make it shorter or anything of that nature?

A. Well, I'm not referring to that one specifically because I wasn't there and therefore the general buildup of annoyance wouldn't be precipitated by that one because I wasn't there.

Q. What meetings that you had could Dr. Robinson have been responsible for shortening or doing away with?

A. Well, I know that we never had these long meetings before Dr. Robinson was in town, we haven't had them since, so my assumption is that he was responsible for the long meetings.

Q. That is an assumption of yours, then?

A. That is an assumption.

Q. You felt during that period that the fact you were having these meetings was the responsibility of Dr. Robinson? A. That's right.

Q. Now, there was during this period a general feeling of resentment, was there not, on behalf of

(Testimony of Ralph S. Keyes.)

the officers and trustees of the society against Dr. Robinson? A. Yes. [2257]

Q. What did that arise from, that resentment?

A. Arose from all this foolishness that had been—I mean, everybody felt that the dollar and a half thing was a lot—either pay the bill or somebody, you know, get the thing out of the hair, get over with it. It was just—it seems so silly and, obviously, it still does to me.

Q. Well, the dollar and a half thing as you refer to it, wasn't the main consideration after the 11th of October, was it, 1950?

A. You say the dollar and a half was not the main consideration?

Q. Yes. In other words, that occurred in August—

A. That was in September. What are we driving at? I mean what is the question?

Q. In other words, you stressed importance of the dollar and a half matter?

A. Oh, well, I mean it started—that is the thing that sticks in my mind as the start of the thing, you see, and it seemed so trivial.

Q. Is that what you had in mind all during this proceeding when you say it was all trivial?

A. During what proceeding? This right now?

Q. No; the subsequent expulsion, and so on, all the meetings that you referred to as being unpleasant? [2258]

A. Well, the meetings were unpleasant because they lasted so long. Yes, I mean having the thing

(Testimony of Ralph S. Keyes.)

being blown up into such proportions from such a small—it seemed like a small matter to me.

Q. Well, now, after the 11th of October, when the Brooks complaint was made, what could Dr. Robinson have done to prevent the holding of all these meetings, and so on?

A. I don't know. What do you think he could have done?

Q. Well, now, I am asking you. You stated you felt he was responsible for them and I am asking——

A. Well, I think he was.

Q. What could he have done to have prevented them at that point after the Brooks complaint had been made? If he had come in and apologized would they have dropped the whole thing?

A. You mean apologize for what?

Q. For writing these letters that were critical of the grievance committee and the bureau?

A. Oh, as I recall, we had been informed——

Mr. Rosling: If the Court please, that is calling for speculation and conjecture and hindsight, and I don't think we should take the time of the Court and I object to it.

Mr. McNichols: Your Honor, what I am getting at here is the motive of this thing and I feel that this witness [2259] can testify as to what the primary motive was for pressing this matter.

A. For who pressing the matter?

Mr. McNichols: For the society pressing this matter against Dr. Robinson.

(Testimony of Ralph S. Keyes.)

A. Didn't press any matter against Dr. Robinson, Judge.

The Court: Go ahead.

Mr. McNichols: Pardon?

The Court: Go ahead.

A. Just telling the Judge we didn't press any matter against—it all started from—didn't it all start from that dollar and a half letter and then a month or so later, why then, Mr. Brooks came around and made the complaint? It was all part and parcel of the same thing, wasn't it? I mean—

Q. (By Mr. McNichols): Well, Dr. Keyes, the trustees and officers of the society pressed charges against Dr. Robinson, did they not, referred them to the state grievance committee and held a hearing?

A. Is that pressing charges?

Q. Well, you can call it what you like.

A. I mean we never considered ourselves as lawyers or judges or jury of anything. If that is pressing charges, why, OK, I will put in with you, but I don't know what you mean by pressing charges. We were trying to see that [2260] justice was done on both sides and we had Mr. Brooks' statement—at least, this is hearsay and you have heard it a thousand times before—we had Mr. Brooks' statement that if we didn't do something about it, he would, and we were trying to protect one of our members so that there wouldn't be another lawsuit on our hands, and so therefore, we were trying to use efforts to settle Mr. Brooks' complaint.

Q. To settle it?

(Testimony of Ralph S. Keyes.)

A. Settle Mr. Brooks' complaint, that's right.

Q. How were you going to settle it?

A. By investigating the matter and seeing if it had any merit, and I am sure you have a history of that.

Q. Pardon?

A. And I am sure you have a history of the efforts that were made to settle the complaint.

Q. Well, the only thing is, Dr. Keyes, the Court doesn't as yet have the history of it and that is what we are trying to get across. But, in any event—

The Court: If I haven't got the history of it, I have had plenty of time to get it, you have had plenty of time to present it, I will say that.

A. Thank you, Judge.

The Court: I don't know how many more weeks we would need. Go ahead. [2261]

Q. (By Mr. McNichols): Were you in fear of harm from Dr. Robinson, Dr. Keyes? A. No.

Q. Do you know of any other members of the society that were?

A. I had heard several members express the opinion that they feared violence, yes.

Q. Now, Dr. Keyes, you were president of the society during the year 1952, were you not?

A. Yes.

Q. Were you present at the time you received the telegram from the AMA?

A. Well, I suppose that telegram was delivered to somebody's office, probably Charlie Fullerton's

(Testimony of Ralph S. Keyes.)

office, and I am sure I wasn't there when it was delivered, no.

Q. Well, you have seen the telegram?

A. I have seen it, yes.

The Court: When were you president, 1952?

A. Yes, 1952.

The Court: The calendar year of 1952?

A. Yes, sir.

Q. (By Mr. McNichols): Does that appear to be the telegram that you received on the 1st of February, 1952?

A. Yes, sir, that's right.

Q. And what were your objections then to reinstating Dr. [2262] Robinson, Dr. Keyes?

A. Right then?

Q. Yes.

A. Well, we felt the amount of effort we had put into this thing, that we certainly should have more to go on than a telegram to reinstate a man that we spent all this time going over the history of the thing, and then if we just go ahead and receive a telegram out of the blue, how did they know that anybody could send a telegram like that, no signature on it or anything? In a court of law, is a telegram assumed? If I wanted to make a will and have it sent to New Hampshire, is a telegram sufficient evidence that I changed my will? I mean, we never considered that as legal evidence.

Q. Have you ever seen a telegram that had any more of a signature on it than that?

A. No, I never had.

(Testimony of Ralph S. Keyes.)

Q. You didn't question the authenticity?

A. Yes, we did.

Q. Oh, you did? Did you think it might have been from someone other than the Judicial Council?

A. Yes, with all the shenanigans that had been going on as far as we were concerned in the last year or so, why, anything could happen.

Q. Did the other officers of the society feel that that [2263] was probably not a telegram from the Judicial Council of the AMA?

A. I don't know how they felt. If I did, I have forgotten.

Q. At the time you expelled Dr. Robinson, or at the time he was expelled on the 22nd of May of 1951, were you aware that the expulsion would cause him to lose his hospital privileges?

A. Well, it is written right down there in the bylaws of both hospitals, isn't it?

Q. And you had that knowledge at that time, didn't you? A. Yes.

Q. Do you recall, Dr. Keyes, ever reading the findings and recommendations of the state grievance committee in the Brooks vs. Robinson complaint?

A. I don't recall.

Q. Now, you wrote to Dr. Cunniffe just shortly after receiving this telegram, did you not, Dr. Cunniffe, the chairman of the Judicial Council?

A. I suppose.

Q. And protested the procedure, protested the use of the telegram in informing you?

(Testimony of Ralph S. Keyes.)

A. Well, do you have a copy of the letter that I wrote? If you do, why, I did.

Q. Just trying to save time, if you remembered it. A. Well, I don't recall. [2264]

Q. And now, you referred to the shenanigans of Dr. Robinson. Were you referring to the various criticisms he had made of the grievance committee, and so on, the letters he had written?

A. Well, we never—not that I am an oldtimer in the town—but we never had anybody yet of the short time I had been here of circularizing the whole state and the local members of the society and townspeople and everybody else with long letters. Well, I mean, that was—that is part of the shenanigans.

Q. Well, I will ask you, Dr. Keyes, if you recall this testimony on your deposition taken in January of 1956— A. Nineteen—when?

Q. Nineteen fifty-six. (Reading):

“Q. Did you have any real doubt in your mind that the telegram was an authentic telegram from the AMA?

“A. Now, what telegram is that? The one saying that the Judicial Council reversed our decision?

“Q. That's right.

“A. No, I don't think there was any serious doubt as to whether it was an authentic telegram or not.

“Q. Well, why, then, didn't you reinstate? The ruling [2265] was in, wasn't it?

“A. We had kicked him out prior to all this.

(Testimony of Ralph S. Keyes.)

“Q. Yes. Oh, long before this, you see. You see, the hearing, he was kicked out the preceding spring, he was out all that way, and the hearing was held in Los Angeles, and now we are back, you see into the—— A. This is February of '52?

“Q. Yes, February of '52. You see, he didn't accomplish restitution until early in the summer.

“A. Well, I don't know how much contact you have had with the doctors in the past, but they are a pretty independent lot and they feel like they like to do their own thinking and did—We probably felt that we had kicked him out and we could take him back when the year was up.”

Subsequently on the same page:

“Q. In other words, you were trying to get the whole year in?

“A. Well, I don't think there was any feeling that we had him out on the hill for a year and were going to show him——”

Mr. Rosling: If your Honor please, nothing that he [2266] has read tends toward impeachment in any way. It is on a different subject matter and I think it is an improper use of the deposition of the witness. The witness is present and is here.

Mr. McNichols: I am merely asking the witness if he recalls this testimony.

The Court: Pardon?

Mr. McNichols: I am merely asking the witness if he recalls that he gave this testimony.

Mr. Rosling: I don't think that makes any difference. I don't think he is entitled to read a deposi-

(Testimony of Ralph S. Keyes.)

tion on an extraneous subject matter and ask him if he recalls. If he wishes to lay a basis for impeachment, let him ask the question. If he testifies differently, why, then he can produce the deposition.

The Court: I think you may use the deposition or you may call the witness, you should give him an opportunity to testify, and then if it is inconsistent with the deposition, call his attention to the deposition.

Mr. McNichols: All right.

Q. Well, then, what was the attitude of the society and yourself, Dr. Keyes, with respect to whether or not you should observe the ruling of the Judicial Council as expressed in the telegram we have been discussing? [2267]

A. The attitude was that we wanted a more official—letter or more official announcement of the Judicial Council's ruling on the subject than a telegram, and we felt that we should have some of their reasons for it. We wanted to go into it a little more fully and, also, as I recall, the subject of an appeal came up. We were going to appeal that finding.

Q. Did you feel, in effect, that you had expelled him and didn't want the Judicial Council telling you what to do?

A. No, the Judicial Council was, as far as we knew, a respected body.

Q. You would observe their findings?

A. Certainly.

Q. Their decision? A. Certainly.

Q. Well, now, getting back to the testimony I

(Testimony of Ralph S. Keyes.)

was reading from your deposition, Dr. Keyes, I will ask you if you remember this:

“Q. In other words you were trying to get the whole year in?

“A. Well, I don’t think there was any feeling that we had him out on a hill for a year and were going to show him, but it was just the idea that we had—as I say now, this [2268] is purely from——

“Q. Yes, from memory.

“A. ——and as to what I would assume that we felt, that we put him out and we weren’t going to let any Judicial Council decision here, which we felt was wrong, deter us from that.”

Q. Now, did that——

A. We weren’t going to let any Judicial Council, which we felt was wrong interfere?

Q. “Deter us from that.”

A. Deter us from that?

Q. Yes.

A. All right, the record will show that we appealed the Judicial Council ruling and, therefore, we felt that they were wrong or we wouldn’t have appealed it.

Q. But that was your feeling at that time and it is now, is that right?

A. That we weren’t going to let the Judicial Council deter us from a year or being out a year?

Q. Well, I’m using your testimony.

A. Well, I hope you recognize that someone greater than I once said that consistency is a hobgoblin of small minds. I have got to say the same

(Testimony of Ralph S. Keyes.)

thing that I said three months ago on some—I mean, use the same words. [2269] And now, what do you want to know? What is the question?

Q. What I want to know fundamentally is, first of all, why after the Judicial Council had reversed this thing, Dr. Robinson was kept out of the society for a substantial period of time? [2270]

A. Why was he kept out?

Q. Yes?

A. Because we were going to appeal that ruling of the Judicial Council. We felt that we had not had a fair shake down in Los Angeles, I think it was, where the hearing took place; that we were apprised of the hearing only a few days before it was to take place. We didn't have the documents with us. That Judicial Council, at least the report we got back from Page and Tompkins was that they weren't given a chance to say anything; that when they went to speak, why, they were shut up; and, therefore, our minds locally were made up on the notion that we were not given a fair hearing and therefore we were going to appeal the ruling and we were not going to take Dr. Robinson back in until we had had a chance to appeal it.

Q. So now, when you took that position and that feeling, were you concerned only with the fact of the Brooks complaint or with the general attitude toward Dr. Robinson that existed over the past year?

A. Well, we took that feeling from the action of the Judicial Council, because, at least as I recall now, we felt that we hadn't had a fair hear-

(Testimony of Ralph S. Keyes.)

ing [2271] and therefore we were going to appeal the decision.

Q. Do you recall certain communications that took place approximately that time between the original decision and the rehearing?

A. Well, I have been shown before a letter that I wrote to Dr. Benson, who then, I think, was state president.

Q. Well, I show you Plaintiff's Exhibit 232 and ask if you recall seeing that before? It is a letter dated June 26, 1952, purportedly from you and Dr. Tompkins to Mr. Neill?

Mr. Tuttle: Bob, I can't hear what you are saying back here.

Mr. McNichols: Referring to 232, Mr. Tuttle, the letter from Dr. Keyes and Dr. Tompkins to Mr. Neill.

Mr. Tuttle: Yes.

A. Well, why have two people supposedly signed this? I mean, is this a photostatic copy of two separate letters all on one sheet? I mean, there is one part signed by me and one part, another part, signed by Dr. Tompkins.

Q. Do you recall seeing it in that form before?

A. (No response.)

Q. Now, Dr. Tompkins was assisting you in handling this matter at this time, wasn't he?

A. Yes. I don't recall any letter with Dr. Tompkins' [2272] signature at the bottom and mine up here, no.

Q. Dr. Tompkins says here:

(Testimony of Ralph S. Keyes.)

“It is our local hope that a copy of this suit,” speaking of the civil action filed in the state court, “will be placed in the hands of each of the Judicial Council members before their decision is written.”

A. Yes.

Q. What effect did you think that could have on your factual situation?

A. Want to let them know what the local situation was.

Q. Did you feel that could influence the decision of the Judicial Council?

A. Well, we must have felt that or we wouldn't have wanted them to have a copy of the suit.

Q. Then, you were motivated by something more than the feeling you hadn't received a fair shake at the hearing, were you not?

A. What is the date on this letter now?

Q. The letter which I just referred to, Exhibit 232, June 26, 1952.

A. Well, if you had a suit of \$136,000.00 facing you, that would motivate you some way, wouldn't it?

Q. Now, Dr. Robinson requested reinstatement shortly [2273] after he received the letter from the Judicial Council, did he not?

A. I suppose. I would take your word for it.

Q. I will show you a letter dated February 18, 1952, marked Plaintiff's Exhibit 166, from Miles Robinson to Dr. Keyes, and ask you if you recall seeing that letter or a copy of it?

A. Yes, I recall this.

(Testimony of Ralph S. Keyes.)

Q. Did you receive it shortly after February 18, 1952? A. I don't know.

Q. Now, I show you a letter dated February 29, 1952, marked Plaintiff's Exhibit 172, purportedly from yourself to Dr. Robinson. Do you recall writing that letter? A. Yes.

Q. It is a letter informing Dr. Robinson that he was not to be reinstated, at that time, is that right?

A. That's right.

Q. You also wrote to Dr. Benson of the state association about this time, did you not, concerning the appeal? A. Yes.

Q. And did you receive this letter dated April 14, 1952, from Mr. Zimmerman of the Washington State Medical Association, Plaintiff's Exhibit 200?

A. Well, here is my note here that asked John Davis to [2274] file this under the appropriate head, so naturally I received it.

Mr. Rosling: What letter are you referring to?

Mr. McNichols: It is a letter from Bruce Zimmerman to Dr. Keyes, dated April 14, 1952, Plaintiff's Exhibit 200. It reads as follows:

"At the April 9, 1952, meeting of the Executive Committee of this Association a communication relative to the AMA Judicial Council's decision on Dr. Robinson's appeal from the action of the Walla Walla Valley Medical Society was read and the following action taken:

" 'It was moved, seconded and carried that: * * * the Walla Walla Valley Medical Society be informed this matter has been taken under advise-

(Testimony of Ralph S. Keyes.)

ment and will be submitted to the Board of Trustees for its consideration.'

"Yours very truly,

"BRUCE ZIMMERMAN, M.D.

"Secretary-Treasurer."

Q. Dr. Keyes, when Dr. Robinson filed his suit in the state court, did you send a telegram immediately to Dr. Lull of the AMA? [2275]

Mr. Tuttle: If the Court please, all these letters and telegrams have been received in evidence with the dates on them and we haven't questioned the authenticity or that they were sent or received. It isn't pertinent to go——

Mr. McNichols: I wish to question him briefly about it, Mr. Tuttle.

The Court: Couldn't you call his attention to them and ask him the questions you want to? I don't think there is any question that they were sent.

Mr. McNichols: Yes, your Honor.

Q. Do you recall sending that, Dr. Keyes?

A. No, I don't.

The Court: Although I appreciate the fact he has got to look at them, probably, or he couldn't answer the question.

Q. (By Mr. McNichols): You don't recall having sent that? A. No.

Q. Well, it is signed Ralph S. Keyes, president of the Walla Walla Medical Society.

A. Well, you just showed me a telegram that is

(Testimony of Ralph S. Keyes.)

never signed, I mean, that is not my signature, that is a print.

Q. Do you think you didn't send that telegram?

A. No, I probably sent it, sure, but I don't recall [2276] sending it.

Q. Do you recall discussing it with anyone else, sending a telegram to Dr. Lull about that suit?

A. No, I don't.

Q. Did you study the bylaws and constitution of the local society during the expulsion proceedings, Dr. Keyes?

A. I have forgotten.

Q. You have forgotten whether or not you studied them?

A. Yes.

Q. Are you familiar with the provisions now?

A. Well, if you ask me about any specific part, I might be, but to rattle them off to you, I can't, no.

Q. You don't know whether you had read them during the period or not?

A. (No response.)

Q. One thing, Dr. Keyes, at the meeting of the society held January 25th, 1951, I notice there is an entry in the minutes of that meeting to the effect that the minutes of certain previous meetings were read.

Referring to a paragraph in the minutes of the society meeting of January 21, 1951——

Mr. Kimball: I don't believe this witness was a trustee at that period and I don't know what knowledge he would have of it. This is a trustee [2277] meeting you are referring to.

Mr. McNichols: No, it is a meeting of the Walla Walla Valley Medical Society, Mr. Kimball.

(Testimony of Ralph S. Keyes.)

Mr. Kimball: Beg your pardon.

The Court: What date is that?

Mr. McNichols: It is January 25, 1951.

The Court: All right.

Q. (By Mr. McNichols): Do you recall, Dr. Keyes, the reading of the minutes referred to in this paragraph on the first page of the minutes?

A. I don't recall that, no.

Q. Well, then, subsequently, Dr. Keyes—incidentally, did you go to either of the hearings before the Judicial Council? A. No.

Q. Dr. Tompkins represented the society, I believe, at one of the hearings, didn't he?

A. Dr. Tompkins and Dr. Page at Los Angeles and I think Dr. Tompkins did in Chicago.

Q. And when you received the second word of the Judicial Council, the society reinstated Dr. Robinson and you so notified him?

A. As I recall.

Q. Did you work with Dr. Tompkins in preparing a suggested opinion for the AMA to enter in the rehearing? [2278] A. No, I did not.

Q. One thing, Dr. Keyes, were you present in court this morning when Dr. Kincaid testified?

A. Yes.

Q. Was your recollection of the events at the expulsion meeting in substantial accordance with his? A. What specific question, please?

Q. Well, he described briefly that Dr. Page had talked and Dr. Tompkins had talked and Dr. Cowan had talked.

(Testimony of Ralph S. Keyes.)

A. What did he say? Well, as I recall, it was about these three things, it was substantially correct, yes.

Mr. McNichols: I think that is all, Dr. Keyes.

Mr. Kimball: No questions.

The Court: That is all, then, Dr. Keyes. Dr. Keyes may be excused, I assume.

A. Thank you.

(Witness excused.) [2279]

* * *

DEPOSITION OF SISTER BONOSA

“Q. State your full name and address.

“A. Sister Bonosa, St. Mary’s Hospital, Fifth and Poplar Streets, Walla Walla, Washington.

“Q. State the names and addresses of the officers, directors, agents, and physician members of committees governing the status of physicians on the staff of the hospital at present.

“A. LeGrand Anderson, M.D., President of the Medical Staff. [2280]

“John R. Cranor, M.D., Vice-President of the Medical Staff.

“Robert H. Schaeffer, M.D., Secretary of Executive Committee.

“Robert W. Jamison, M.D., Member of Executive Committee.

“Robert C. Beck, M.D., Member of Executive Committee.

(Deposition of Sister Bonosa.)

“Frederic Davis, M.D., Member of Executive Committee.

“Q. State the names and addresses of the officers, directors, agents and physician members of committees governing the status of physicians on the staff of the hospital on or about May 15, 1951.

“A. Merrill Smeltzer, M.D., President of the Medical Staff.

“George A. Falkner, M.D., Vice-President of the Medical Staff.

“Peter T. Brooks, M.D., Secretary of Executive Committee.

“Leroy O. Carlson, M.D., Member of Executive Committee.

“Ralph S. Keyes, M.D., Member of Executive Committee.

“Clifford D. Hogenson, M.D., Member of Executive Committee.

“Q. State the names and addresses of the officers, directors, agents and physician members of committees governing the [2281] status of physicians on the staff of the hospital on or about March 25th, 1952.

“A. Peter T. Brooks, M.D., President of the Medical Staff.

“E. O. King, M.D., Vice-President of the Medical Staff.

“John R. Cranor, M.D., Secretary of Executive Committee.

“Merrill Smeltzer, M.D., Member of Executive Committee.

(Deposition of Sister Bonosa.)

“William F. Holmes, M.D., Member of Executive Committee.

“George A. Falkner, M.D., Member of Executive Committee.

“Q. State what oral and/or written communication the officers and/or agents of the defendant corporation received from any officers, agents or members of the Walla Walla Valley Medical Society, Washington State Medical Association and American Medical Association relative to the status of the plaintiff as a member of the said professional societies.

“A. Letter dated May 25, 1951, from Leroy O. Carlson, M.D., Secretary, Walla Walla Valley Medical Society to Sister Superior, St. Mary's Hospital, Walla Walla, Washington, as follows:

“Dear Sister Superior:

“Please be advised that, as of May 22nd, 1951, Dr. Miles H. Robinson ceased to be a member of the Walla Walla Valley Medical Society and, as of the same date, ceased to be eligible for membership.’

“Q. What were the rules and regulations of the defendant with respect to the eligibility of physicians for its staff on or about May 15, 1951?

“A. The following is copied from the ‘Constitution and Bylaws’ of the Staff of St. Mary's Hospital, Walla Walla, Washington:

(Deposition of Sister Bonosa.)

“ ‘Article III—Membership

“ ‘Section 1. Requirements for membership on the medical staff shall be:

“ ‘1. United States citizenship.

“ ‘2. Qualification by law to practice medicine and surgery in the States of Washington and/or Oregon.

“ ‘3. Qualified for membership, or satisfactory application on file with the Walla Walla Valley Medical [2283] Society.

“ ‘4. Election to membership by the medical staff and approval by the hospital management.

“ ‘5. Approval by the Executive Committee.

“ ‘6. Practicing within the community or within reasonable distance of the hospital.’

“Q. When were the said rules and regulations adopted and put into effect?

“A. September 28, 1950.

“Q. What were the rules and regulations of the defendant with respect to the eligibility of physicians for its staff on or about March 25, 1952?

“A. Same as above set forth in answer to Interrogatory 6.

“Q. When were the said rules and regulations adopted and put into effect?

“A. Same as above set forth in answer to Interrogatory 7.

“Q. What are the rules and regulations of the defendant with respect to the eligibility of physicians for its staff at present? [2284]

(Deposition of Sister Bonosa.)

“A. Same as above set forth in answer to Interrogatory 6.

“Q. When were the said rules and regulations adopted and put into effect?

“A. Same as above set forth in answer to Interrogatory 7.

“Q. On the said three dates, to wit, May 15, 1951; March 25, 1952, and at present, what were and are the rules and regulations regarding reinstatement of a physician to the staff of the defendant corporation’s hospital after suspension and/or expulsion?

“A. The following is copied from the ‘Constitution and Bylaws’ of the staff of St. Mary’s Hospital, Walla Walla, Washington:

“ ‘Article III—Membership

“ ‘Section 5. Reinstatement:

“ ‘The procedure for reinstatement to membership on the staff shall be the same as in the case of original appointment, except in the case of approved leave of absence, a request for which has been submitted [2285] in writing and approved by the Executive Committee.’

“Q. Did the defendant receive notification of the plaintiff’s reinstatement as a member in good standing of the Walla Walla Valley Medical Society, Washington State Medical Association, and American Medical Association, and, if so, when and in what form?

“A. Defendant, St. Mary’s Hospital, received a copy of the following letter:

(Deposition of Sister Bonosa.)

“ ‘July 22nd, 1952.

“ ‘M. H. Robinson, M.D.

“ ‘Drumheller Building

“ ‘Walla Walla, Washington

“ ‘Dear Dr. Robinson:

“ ‘At a meeting of the Board of Trustees of the Walla Walla Valley Medical Society, convened the evening of July 21, 1952, the Board, acting on the decision of the Judiciary Council of the A.M.A., reinstated you to membership in the Walla Walla Valley Medical Society.

“ ‘Very truly yours,

“ ‘RALPH S. KEYES, M.D.,

“ ‘President.

“ ‘Copies

“ ‘1. Walla Walla General Hospital

“ ‘2. St. Mary’s Hospital.’

“Q. When the Walla Walla General Hospital on or about March 25, 1952, recognized the reversal of the expulsion of the plaintiff from membership in said professional societies, why did the defendant not similarly restore the plaintiff to its staff?

“A. Neither this affiant nor this defendant have any knowledge concerning any action taken by the Walla Walla General Hospital on or about March 25, 1952, concerning the plaintiff. On said date this affiant was not present in Walla Walla, Washington, nor connected with St. Mary’s Hospital in any capacity, but is informed and, therefore, believes that the then governing authority of the hospital

(Deposition of Sister Bonosa.)

Sister Joseph, did not consider it to be in the best interests of the hospital to restore plaintiff to said hospital's medical staff.

“Q. When, where, and in what manner was the decision made by the defendant not to [2287] reinstate the plaintiff as a member of its hospital staff?

“A. This affiant is not advised as to when, where, or in what manner a decision was made by the then administrator and governing authority of the hospital not to reinstate plaintiff as a member of the hospital staff, nor is this affiant able to state whether or not a formal decision as such was ever made by any persons in authority at that time in defendant's hospital.

“Q. Was the said decision made solely by the officers and agents of the defendant on its responsibility?

“A. This affiant is advised that it was on the sole responsibility of the then governing authority of the defendant hospital that no action was taken on the Plaintiff's letters of February 18, 1952, March 8, 1952, and May 6, 1952, addressed to St. Mary's Hospital, and on his not being reinstated.

“Q. What other persons, if any, participated in the said decision by the defendant [2288] corporation not to reinstate the plaintiff to its staff?

“A. This affiant is advised and believes that no other persons participated in the decision referred to in answer to Interrogatory No. 16.

“Q. Did the officers and agents of the defendant corporation consult with any members or officers of

(Deposition of Sister Bonosa.)

the said professional societies or any physicians generally relative to the status of the plaintiff in connection with his possible reinstatement as a member of the hospital staff?

“A. This affiant is advised and believes that the then Sister Superintendent informed the Executive Committee of the Hospital Staff in accordance with the provisions of Section 4(3) of the Constitution and Bylaws of the Staff of St. Mary’s Hospital that the reinstatement of plaintiff to membership on the staff would not be in the best interests of St. Mary’s Hospital and that he would not be readmitted. The officers and agents of [2289] defendant corporation did not consult with any members or officers of the said professional societies or any physicians generally relative to status of plaintiff in connection with his reinstatement as a member of the hospital staff.

“Q. What were the reasons that the defendant corporation refused to reinstate the plaintiff as a member of its staff?

“A. This interrogatory has been answered in Nos. 14 and 18 above.

“Q. During the last five years, what other physicians have been suspended or expelled from the staff of the defendant corporation’s hospital, and what were the reasons therefor?

“A. None.” [2290]

* * *

Let the record show that this is the deposition taken of R. A. Benson, M.D., in this case, at 1309

Seventh Avenue, Seattle, Washington, October 22nd, 1955. (Reading):

DEPOSITION OF R. A. BENSON

“Q. Will you state your full name, please?

“A. R. A. Benson.

“Q. Where is your residence?

“A. Bremerton, Washington, 245 Fourth Street.

“Q. You are actively practicing medicine?

“A. I am, yes.

“Q. Where do you have your office?

“A. At the address given.

“Q. You are a member of the Washington State Medical Association? A. I am, yes.

“Q. Do you belong to a medical service corporation, to a medical service bureau?

“A. I belong to Kitsap Medical Service Bureau.

“Q. In connection therewith do you have a contract with the medical service corporation?

“A. I do, yes.

“Q. That would be with the Kitsap County Medical Service Corporation? A. That is right.

“Q. Are you now an officer of the Washington State Medical Society? [2292]

“A. No, I am a delegate of the Washington State Medical Association.

“Q. To the House of Delegates—

“A. Of the American Medical Association.

“Q. I don't believe you call it the House of Delegates? A. Yes.

“Q. You do call it that?

(Deposition of R. A. Benson.)

“A. Yes, that is correct.

“Q. Were you an officer of the association in 1950 and 1952? A. I was.

“Q. What was your position?

“A. I was president of the state association. I believe it was in 1951 and 1952.

“Q. Were you ever president of the Washington State Medical Bureau? A. No, sir.

“Q. Have you ever held any position with the state bureau? A. No, sir.

“Q. Do you know the plaintiff in this case, Dr. Robinson? A. I do yes.

“Q. When did you first meet Dr. [2293] Robinson?

“A. I believe my first introduction to Dr. Robinson, to the best of my recollection, was at a hearing of the Judicial Council in Los Angeles, if my memory is correct.

“Q. Had you heard of him prior to that time?

“A. I had heard of him, yes.

“Q. In connection with what did you hear of Dr. Robinson?

“A. I had been the recipient of several pieces of mail wherein, as I recall, Dr. Robinson had set forth in these respective documents some of his problems.

“Q. Did you read those letters that were sent to you and pieces of mail?

“A. I examined them for context, yes.

“Q. Did you do anything as a result of reading them? A. I did not, no, sir.”

(Deposition of R. A. Benson.)

Mr. Sembower: I will now move to the next page, 5, line 18. (Reading continued):

“Q. Did you have a grievance committee in the state association at that time?

“A. As I recall, we did.

“Q. How was that grievance committee selected?

“Mr. Rosling: The membership, you [2294] mean?

“Mr. Sembower: Yes, the membership.

“A. The exact method of selection—I would have to refer to records to refresh my mind, but it was selected as stipulated in our constitution and bylaws at that time.

“Q. Wasn't it a fact that the grievance committee had just been formed in 1951 in the state association?

“A. It was a fairly new committee. It was formed somewhere along about that time. I wouldn't be positive as to the exact date.

“Q. Was it not a fact that Dr. Robinson's case was the first one to come before it?

“A. That I cannot answer.

“Q. You don't know of your own knowledge whether it was or not? A. No, I don't.

“Q. Would it be possible that it could have been? A. It could be possible.

“Q. Did you know as president of the state association of the disposition which the grievance committee made of Dr. Robinson's case? [2295]

“A. I presume I would have been on the assumption that the disposition was in keeping with

(Deposition of R. A. Benson.)

the directives that implemented the grievance committee in its action.

“Q. Did you assume that it was being handled according to the procedures that applied?

“A. That is correct.

“Q. Do you know how those procedures were developed?

“A. The procedures for the conduct of the grievance committee?

“Q. Of the grievance committee, yes.

“A. The development of the grievance committee—may I elaborate?

“Q. Do, please.

“A. —was an outcome of a recommendation that was made by the American Medical Association in an attempt to have some grassroot opportunity for the mediation of difficulties that might occur either between doctors themselves or between doctors and patients, and the American Medical Association encouraged that the component societies and state associations explore the possibility of establishing these [2296] committees. It was in keeping with that recommendation, which we felt was an excellent one, that we made a concerted effort to establish it.

“To do so—and again, the records would have to verify this—it is my recollection that we appointed a committee to draft the necessary machinery whereby this could be established, and in that manner it came into being.

“Q. Then the development of the local grievance

(Deposition of R. A. Benson.)

committees did not also flow in this general chain of development from the American Medical Association which led to the establishment of your state grievance committee?

“A. I believe it was a further expansion of that idea.

“Q. Do you remember in connection with that whether there was any consideration of the matter whether these committees should be secret, that is, not be known to the doctor, or whether the names of the members should be known to them? Was that ever given consideration? [2297]

“A. It was. I believe it was a controversial point whether it should be a known membership or whether it should be a hidden membership.

“Q. Did the state association have any policy with respect thereto?

“A. I don't believe there was a written policy. I believe that our state grievance committee's membership was entirely known to everybody concerned.

“Q. The local societies of the association have a charter from the state association, do they not?

“A. That is correct.

“Q. What do those charters purport to be?

“A. Not having seen one I doubt that I am capable of answering. I presume it is the authority or the authorization for a component society to be formulated. That is a presumption.

“Q. Now, Doctor, you attended the meeting of the Judicial Council in Los Angeles in the late

(Deposition of R. A. Benson.)

fall of 1951. How did you happen to attend that meeting?

“A. Because of my connection with the [2298] state association.

“Q. Did somebody ask you to attend?

“A. That I do not recall. I felt it was my responsibility, certainly, being an officer of the state association. Beyond that I do not recall that I was commissioned particularly.

“Q. Do you remember who else attended from the state association? I realize that may be difficult, but if you just remember generally who may have attended.

“A. I will recite my recollection of the meeting.

“Q. That will save us a little time if you can kind of paint in what you do remember seeing there and so forth.

“A. Some information was given me prior to my departure for Los Angeles which was, I believe, my first factual information regarding the case per se. As to the membership or who was present at the meeting, I would be unable to tell you at this time.

“Q. How long in advance of the meeting did you know that it was going to be held, if you [2299] recall? A. I do not recall.

“Q. Did it seem to you as if the notice was short? A. That also I do not recall.

“Q. The reason I ask is because that the local itself, as to my understanding, objected later that it did not receive adequate notice. I wondered if the state society felt the same way?

(Deposition of R. A. Benson.)

“A. If so, it escapes my recollection.

“Q. Who carried the ball in the meeting for what we might call the prosecution of Dr. Robinson, do you recall?

“A. I don't recall there was a prosecution. My recollection was that it was a Judicial Council hearing.

“Q. Were there statements presented which gave the viewpoint of the Washington State Society and the local society?

“A. If so, on interrogation.

“Q. But no prepared statements were given?

“A. Not to my recollection.

“Q. Were you questioned as to the particulars?

“A. I may have been. [2300]

“Q. Do you remember what you said?

“A. No, I don't.

“Q. Doctor, I have in my hand here a copy of what purports to be a letter from Caniffe, whom I assume is Dr. Caniffe, erstwhile chairman of the Judicial Council of the American Medical Association, addressed to Dr. Ross D. Wright, dated November 15, 1951, saying, ‘This is to inform that Dr. Miles Robinson is prosecuting his appeal from the Judicial Council of the American Medical Association, from the decision of the Washington State Medical Association, expelling him from membership. I am instructing Dr. Robinson to prepare a brief, sending copies for the members of the Judicial Council, and also one copy for the Washington State Medical Association. Would you please send

(Deposition of R. A. Benson.)

us six copies of your responding brief immediately after receiving the appellant's brief and send additional copies to Dr. Robinson.' "

"Did Dr. Wright ever speak to you about receiving this letter from Dr. Caniffe? [2301]

"A. He may have. I do not recall.

"Q. Why would Dr. Wright receive such a letter from Dr. Caniffe?

"A. It is my recollection that at that time Dr. Wright was a delegate from Washington to the American Medical Association, and possibly through that relationship the letter was directed to him.

"Q. Did he have any official position in the state association that would place him in charge of this activity of preparing the briefs and so forth?

"A. Not to my knowledge.

"Q. He was not even on the grievance committee, was he?

"A. That I cannot answer. I do not know.

"Q. I have what purports to be a copy of a letter from Dr. Miles H. Robinson, dated November 24th, to the Washington State Medical Association, saying, 'Dear Sir: Dr. Caniffe, chairman of the Judicial Council of the American Medical Association, in his letter to me of November 15, 1951, asked me to send you the enclosed outline, which I have prepared, summarizing [2302] the improper and illegal procedure used by various parties, leading to and causing my expulsion from the local medical society.'

(Deposition of R. A. Benson.)

“Was this letter ever brought to your attention so far as you recall? A. Signed by whom?”

“Q. By Dr. Robinson.

“A. And directed to whom?”

“Q. ‘Dear Sirs’—not to any particular person.

“A. And your question, was it ever brought to my attention?”

“Q. Ever brought to your attention.

“A. It may have been but I don’t recall it.

“Q. To whom would this normally go?”

“A. It would go to our executive secretary and then be presumably presented to the executive committee.

“Q. That would have been, of course, Mr. Neill, is that correct?”

“A. The executive secretary would be Mr. Neill.

“Q. Do you know whether this was presented to the executive committee by him?”

“A. If Mr. Neill received it I am quite certain that he saw that it was properly channeled. [2303]

“Q. We have a copy of a letter purporting to be a copy of a letter from Mr. Rosling to Dr. Caniffe, dated November 20, 1951, referring to the Wright letter that I mentioned, dated November 15, 1951. I ask you if you ever saw this letter before?”

“A. I am not certain that I saw the letter. I notice, however, there is a copy directed to the state medical association, and it is a reasonable assumption that it may have received my attention. How-

(Deposition of R. A. Benson.)

ever, I am not impressed with its significance at the present time.

“Q. Now, I have before me here what purports to be a photostatic copy of minutes of the Walla Walla Valley Medical Society held at the Marcus Whitman Hotel, a meeting of the trustees of that society, November 28, 1951. It states, ‘The executive secretary reported that telephone calls had been received Wednesday, November 28, from the Washington State Medical Association from a Dr. Caniffe. We assume that may be Dr. Caniffe in New York. The name and the location are as understood by the executive [2304] secretary from the report of the telephone operator and from Mr. Rosling in Tacoma. The calls were all relative to a brief that had been filed with the Judicial Council of the American Medical Association by Dr. Miles Robinson, and that inquiry was being made as to why the Walla Walla Medical Society had not filed with the Judicial Council an answer to the Robinson brief, and whether or not the society was being represented at the American Medical Association meeting in Los Angeles, where a hearing was to be held by the Judicial Council on the Robinson brief.’

“Then, complaining further, that there was shortness of time.

“Do you know, Doctor, why the Walla Walla Medical Society would have received such a short notice of that meeting down there in view of these letters we have here?

(Deposition of R. A. Benson.)

“A. No, I cannot answer that. The Judicial Council usually meets at the time of either the annual session or at the [2305] time of the interim session, and those dates are pretty well fixed. Just when the appeal was filed, I do not know, and whether it was because of that shortness of time that existed, if so, I cannot answer.

“Q. You attended the hearing in Los Angeles?

“A. I did, yes.

“Q. Do you remember what day of the week it fell on?

“A. I do not know positively, but I would hazard an opinion that it was on a Sunday.

“Q. That was our opinion. In fact, I believe that is it.

“Now, Doctor, when you attended the meetings would you say in your observation there that the Washington State Society was adequately prepared to answer the questions directed to its representative by the chairman of the council? This is not a rhetorical question. I am just asking what your reaction is.

“I will tell you what I am driving at exactly. You see, later on it was held that the proceeding was imperfect, and we [2306] were just wondering what your reaction was about the proceeding as you observed it?

“A. Well, I do not recall that I was particularly impressed in that regard. I do recall going through a welter of material prior to the hearing. Whether the press of time was significant escapes me now.

(Deposition of R. A. Benson.)

“Q. For instance, did the Washington State Society have a copy of its own constitution and bylaws to supply the hearing officers?

“A. That I do not know.

“Q. Was there a reporter present?

“A. That I cannot answer.

“Q. Did you feel, having attended the meetings, that the position of the society was adequately presented?

“A. It was my first attendance at a meeting of the Judicial Council. I know I felt the definite weight and responsibility of the state association as it pertained to its connection in this instance, feeling that we had in every sense abided by our rules, our constitution, and it was my [2307] feeling and responsibility that I wanted to insist that we had complied with the constitution, bylaws, and rules that I was pledged to uphold in my connection with the state association.

“Q. Did you feel it would be a serious reflection on the association if it were overruled by the Judicial Council?

“A. I took enough interest in the state association to be very zealous that it was following its rules to the utmost.

“Q. You felt that it would be a reflection on the association, did you not?

“A. If we had in any sense, if we were implicated as not having done so.

“Q. In fact, that is the way it turned out,

(Deposition of R. A. Benson.)

wasn't it, that the council held that the association didn't follow the procedure, was not that the case?

“Mr. Rosling: Before the doctor answers the question, he should be permitted to read the opinion of the Judicial Council.

“A. I have forgotten the opinion of the Judicial Council. [2308]

“Mr. Sembower: Has he never seen the opinion?

“Mr. Rosling: I assumed he has.

“The Witness: I have, but it has been a long time ago.

“Mr. Sembower: Well, we can supply that, of course.

“Q. (By Mr. Sembower): As a matter of fact, the Judicial Council did direct ultimately Dr. Robinson's reinstatement, did it not?

“A. I believe so, and it is my further recollection that they took exception with the procedure of the state association.

“Q. Again, I want to be perfectly frank with you, as it is one of the things that perplexed us recently when we took a deposition of Dr. Caniffe in New York, and that was his insistence during the deposition that Dr. Robinson should have been held in status quo and his membership not severed until the case, until his last appeal had been exhausted before the American Medical Association.

“What is your knowledge of the rules as they exist in the Washington State at [2309] this time relative to that question?

(Deposition of R. A. Benson.)

“Mr. Rosling: You mean as to the status of the rules now?”

“Mr. Sembower: The status of the rule then.

“Mr. Rosling: Yes.

“A. Well, the action that was taken by the Walla Walla Valley Medical Society, I cannot vouch for at this time. I can say, however, that I believe, and to the best of my knowledge, that whatever action was taken by the Washington State Medical Association was in keeping with our rules and regulations for the conduct of the grievance committee as they existed at that time. I believe they have been subsequently changed.

“Q. In what manner do you believe they have been changed?”

“A. One of the bones of contention that we had difficulty in establishing was the question of the position of the board of trustees of the state association. Our position was established in good faith in the regard that we did not feel that any [2310] subservient committee should have complete authority beyond the cognizance, consent, and approval of the board of trustees, which, according to our constitution, receives its authority in turn from the House of Delegates and acts for the House of Delegates. Because of that basic desire of fairness and retaining the opportunity to screen what subservient committees would do, any action that was taken would have to be subject to the approval of the board of trustees. That resulted in a contention that thereby the state association had disqual-

(Deposition of R. A. Benson.)

ified itself in the conduct of any disciplinary problems. I believe as a result of that we made some changes. I cannot be certain, but that is my recollection.

“Q. They would be changes directed toward preserving a doctor’s status until his case was finally disposed of? A. That I do not recall.

“Q. Dr. Caniffe said definitely—implies, I should say, quite definitely—that had the Judicial Council known that Dr. [2311] Robinson was in suspense, actually without hospital privileges, and not an active member, that it might have acted sooner. Do you think that Dr. Caniffe should have known that he was without his hospital privileges and without membership in the society?

“A. At what time?

“Q. At the time the Robinson case was pending?

“A. At the time of the hearing in Los Angeles?

“Q. Yes, and subsequent thereto—you see, it was not finally disposed of until the following summer.

“A. I presume that he could have found out by interrogation.

“Q. You don’t know of your own knowledge that he did know? A. No.

“Q. Subsequent to the Los Angeles hearing—let me ask you—did you make any statement at Los Angeles? There was no stenographic record kept there, Doctor, so we just have to rely on what recollection anyone has.

“A. I believe I was subjected to interrogation

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by [2312] Dr. Caniffe. The context of it I could not give you. I don't recall.

“Q. Did you have any conversation there at Los Angeles with representatives of the Walla Walla society about Dr. Robinson's case?

“A. I presume so. I am not certain who the representative from Walla Walla County was at that hearing. However, being that it was a matter of mutual concern, I assumed that there was conversation.

“Q. Do you remember the issues involved in Dr. Robinson's expulsion?

“A. Not particularly—it seems to me there were two cases.

“Q. Yes.

“A. Actually, the hearings that I attended had nothing to do with the facts that were associated with his controversy in Walla Walla County. My connection was entirely in connection with the procedural aspect of the conduct of the state association, and it was our contention that we had, to the best of our ability, conformed with our existing rules, regulations, constitution [2313] and bylaws as they existed at that time, and which was a matter of common information to all members of the state association and its component societies.

“Q. Did the local society members ever discuss with you the fact that Dr. Robinson had withdrawn from the medical bureau there?

“A. Not to my recollection; if so, it was not of concern to me.

“Q. Did they tell you whether he was a trouble-

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maker or whether he was a nuisance or anything else of that kind?

“A. I was never concerned about Dr. Robinson’s personal behavior.

“Q. Did you ever have any conversation with a Dr. Pratt from Walla Walla?

“A. Not to my recollection.

“Q. I will ask you this to see if it refreshes your recollection: Did Dr. Pratt ever tell you that he thought that Dr. Robinson was demented?

“A. I don’t know that anybody has told me that.

“Q. Do you remember anybody ever saying that to you? A. No, sir. [2314]

“Q. Of course, you don’t remember talking to Dr. Pratt at all.

“I will ask you this one other thing to see if it refreshes your recollection—you may not have any recollection—but do you ever remember Dr. Pratt suggesting that he might get in touch with Dr. Robinson’s father about his conduct?

“A. No, sir.

“Q. Well, then, after the Los Angeles hearing, motions were made for the matter to be reopened. Do you remember any discussion about that with you?

“A. I don’t recall of any specific instances of discussion. I do recall that on various occasions at the executive meetings of the state association the status of Dr. Robinson’s case was given us for information, all of which is a matter of record.

(Deposition of R. A. Benson.)

“Q. Were you aware during this period between the close of the hearing in Los Angeles and the rendering of the decision by the Judicial Council, or during the reinstatement of Dr. Robinson, of efforts on the [2315] part of Dr. Robinson to have that decision recognized by the Washington State society and the Walla Walla society?

“A. Was I aware of his efforts?

“Q. Yes, that he was trying to get the decision of the Judicial Council implemented, carried out and be reinstated?

“A. At that time I do not recall, no, sir.

“Q. You see, there was a period of bungling there where the decision sent out by the Judicial Council was in a form that was not recognized by the local societies. They were not on a letterhead, and so on. One was a telegram. This went on for about five months.

“You were not aware during that time of that period?

“A. I may have been aware at that time. However, with the multitude of diversionary responsibilities that I was confronted with at the time as president of the association, this was another instance that now does not come to my recollection.

“Q. I will show you, Doctor, a copy of a letter written to Dr. Edward R. Caniffe, [2316] dated February 21, 1952, by Ralph W. Stevens, M.D., chairman of the Walla Walla Valley Medical Society grievance committee, and showing carbon

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copies marked for Dr. Klein and yourself, and I will ask you if you recall seeing this letter?

“A. Yes, I think I recall having seen this letter.

“Q. What did you do after you received a copy of that letter? A. What did I do?

“Q. Yes, did you take any action after receiving a copy of that letter?

“A. Not to my recollection—it was sent to me for information.

“Q. Dr. Benson, isn't it an extremely damaging thing to a doctor to be suspended from his membership and his hospital associations?

“A. I think it is.

“Q. Shouldn't that be a matter of extreme concern for the association when a doctor is in such a predicament, so long as the matter is still alive?

“A. The authority lies in the county medical society, and they have the power to [2317] discipline, and the action has to be taken there. The state association, which was my responsibility, was acting in the respect of the state organization of the component societies.

“Q. In your tenure as president were there any others that were expelled from membership in the state association other than Dr. Robinson?

“Mr. Rosling: I object to the question because the state has no power of expulsion from membership.

“A. That is correct.

“Q. Well, let me ask about that. Isn't one of the

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criteria for membership in the state association membership in the local association?

“A. That is correct.

“Q. Now, to follow the syllogism out, if one is expelled from membership in the local association, is he not then expelled from membership in the state association?

“A. He has to have a membership in good standing in the county society to be a member in good standing in the state [2318] association.

“Q. Then the action of the county society would have the power of life and death over the member in the state association, would it not?

“A. But that membership in the state association does not prevent him, or his failure to maintain membership in the state association does not prevent him from his ability to practice medicine in his own community.

“Q. But his membership in the local association would, would it not?

“A. It could as far as hospital privileges are concerned.

“Q. Wouldn't it follow then that his membership in the state association would be part and parcel of the same thing? A. In what regard?

“Q. Well, I mean the state association has noted that he has been suspended from membership on the roll as a result of the local association roll.

“A. But that is the prerogative of the local society. [2319]

(Deposition of R. A. Benson.)

“Q. Why, then, do you operate your grievance committee at all?

“A. As a court of appeals from the county societies.

“Q. Then you are concerned about that?

“A. Concerned about what?

“Q. About suspension and expulsion from local societies?

“A. If one of the members of a local society sees fit to appeal, yes.

“Q. Then you would take an interest in it. How many of those appeals have you had? How many of those appeals did you have while you were president?

“A. To my recollection that was the only one.

“Q. Well, Dr. Benson, why then would you not have taken extraordinary interest in this matter?

“A. An interest in the individual or in the action of the county society?

“Q. Both. A. I think we did.

“Q. Did you take concern in the individual?

“A. I would say we did in the respect that we made every effort to see that the rules [2320] and regulations as set forth in defense of an individual as propounded by the state association were adhered to.

“Q. But the Judicial Council didn't say that, did it?

“A. Again, I would want to refer to the decision of the Judicial Council.

“Q. Let's get a copy of that decision. I hand you

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here a copy of a decision of the Judicial Council. That copy was received by Dr. Robinson on March 29, 1952. It doesn't bear a date itself, but it does bear the certification of George H. Lull, secretary, as a true copy.

“Mr. Rosling: That is the decision following the rehearing, and I will hand to the doctor a copy of it.

“Mr. Sembower: No, it is not. It could not be. This is the first decision.

“Mr. Rosling: Well, the first decision was only a wire and that is all.

“Mr. Sembower: No, there is this copy here and then there is a second one after the rehearing.

“Mr. Rosling: What date did it come [2321] out?

“Mr. Sembower: The second one was July 15.

“The Witness: What was the question?

“Q. (By Mr. Sembower): The question was that the Judicial Council, however, did not believe that the proper procedure was followed, did it?

“Before you answer that question, may I ask if you have ever seen this before?

“A. I believe so—yes, I recall this.

“Mr. Sembower: Mr. Reporter, read my last question to the doctor.

“(Question read as follows: ‘The Judicial Council, however, did not believe that the proper procedure was followed, did it?’)

“The Witness: That certainly is what they have intimated in this ruling.

(Deposition of R. A. Benson.)

“Q. (By Mr. Sembower): Well, now, the Judicial Council would have the last say on that question, would it not?

“A. However, our contention was that our procedure was in absolute keeping with the existing rules for the conduct of a [2322] grievance committee as we had established them.

“Q. How does that jibe with this ruling of the Judicial Council?

“A. As I attempted to explain that a little while ago, I stated in our original formation of the grievance committee we had provided for the board of trustees to approve the action of the grievance committee, which was the point that this decision took exception to. However, that procedure was the one that was in effect and was binding upon all members of the state association at that time.

“Q. Well, as matters now stand, does a doctor who is in the exact position that Dr. Robinson was, expelled from membership in a local society, now ousted from membership during the pendency of his appeal?

“Mr. Rosling: You mean as of today?

“Mr. Sembower: Yes, as of today.

“Q. (Continuing): Or does the membership continue uninterrupted until the final disposition of the appeal? [2323]

“A. I believe our constitution would clarify that.

“Q. But you don't know?

“A. I would want to refer to the constitution. I

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believe that the constitution will definitely answer that.

“Q. Let me ask you this: Do you not believe a person is innocent until proven guilty?”

“A. I do.

“Q. Wouldn't that indicate that he should continue in status quo until his last appeal is exhausted?”

“A. It is my belief that our constitution provided for that.

“Q. But that did not happen in Dr. Robinson's case, did it?”

“A. As far as the action of the Walla Walla County Society is concerned?”

“Q. Yes.

“A. May I answer from the constitution and by-laws of the Washington State Medical Association, dated 1951, with a current revision—the current revision, an amendment to Section 4, limitation, ‘However, the disciplinary action voted [2324] by the Society shall be suspended during the pendency of such appeal or appeals or until the time for such appeals shall have elapsed, if no appeal is taken.’ That is our existing rule.

“Q. That is a pasted over leaf that you are reading from?”

“A. That is right. The original one which this amended is as follows: ‘However, the disciplinary action voted by the Society shall remain in full force and effect during the pendency of such appeal or appeals.’”

(Deposition of R. A. Benson.)

“Q. When was that change made?

“A. The exact date I cannot give you.

“Q. By whom was it made?

“A. It was made by the House of Delegates of the Washington State Medical Association.

“Q. Dr. Benson, I take it that you believe in the desirability of the medical bureau and service corporation plan? A. I do.

“Q. Would you be seriously concerned over any attack which was made on that plan?

“A. If it were unjustifiable. [2325]

“Q. Were you aware that Dr. Robinson was making direct attack on that plan in his correspondence and writing? A. I was not.

“Q. Would that have influenced your attitude towards his case, if you had been aware of that?

“A. My interest in his case was entirely in the respect of the fairness of the action of the state association in fulfilling its obligation to its constitution and bylaws in deference to the membership. That was my pledge to the state association.”

Mr. Sembower: I now jump to the next page, 30, line 15.

Mr. Rosling: Line 13 of 30?

Mr. Sembower: Line 15 on 30.

Mr. Rosling: Go ahead.

(Reading continued.)

“Q. Now, after the Los Angeles meeting, who talked to you? Did anybody talk to you about seeking a rehearing? A. That I do not recall.

(Deposition of R. A. Benson.)

“Q. Did you ever have any conversation [2326] with Dr. Klein of San Francisco with reference to a rehearing?

“A. Well, I have had conversations with Dr. Klein. Whether it was in connection with a rehearing I am unable to state.

“Q. Dr. Benson, this is not going on interminably, as we are approaching a windup here. I don't want you to get anxious about this. I am referring to the minutes of the monthly meeting of the membership of the Walla Walla Valley Medical Society, held at St. Mary's Hospital February 28, 1952. We find a passage here, 'Dr. Stevens explained that he had written to Dr. Benson relative to the Robinson case and outlined the answers he had received by telephone from Dr. Benson as to the position and action the local society should take in the matter. The question was then extensively discussed by Drs. Pratt and Page. Following this discussion, Dr. Stevens moved, seconded by Drs. Carlson and Lange, that the action taken by the board of trustees in their meeting of February 12, 1952, tabling all action [2327] relative to the case until the information requested by Dr. Keyes is received, be approved. Motion carried.'

“Do you remember Dr. Stevens getting in touch with you on this matter?

“A. I have a recollection of talking to him over the telephone.

“Q. Do you remember what you told him?

“A. No, I don't.

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“Q. Did you tell him to have the matter tabled?”

“A. I don’t recall.

“Q. Isn’t it possible that you would have seen this opinion that I just read prior to this date, February 28?”

“Well, I want to revise that because the date that appears was subsequent. It is possible that you may have known it was on the way, however, is it not, because there was a telegram?”

“A. Well, that is a presumption.

“Mr. Rosling: You mean that Dr. Benson knew that the opinion was coming from Chicago?”

“Mr. Sembower: Yes, but not the text of it because there was a telegram, the [2328] date of which was February 1st.

“Mr. Rosling: You are asking the doctor if he had knowledge in advance of the opinion that the opinion was coming?”

“Mr. Sembower: That is right.

“Mr. Rosling: Did you so understand the question?”

“The Witness: I had no knowledge of what was coming.

“Q. (By Mr. Sembower): You had no knowledge? A. No.

“Q. It is possible that you might have told them to table it, is that correct?”

“A. I have no recollection of what my suggestion was. However, I think it should be clear that I had no authority as far as the action of the Walla Walla County Society, and whatever suggestion

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that may have been made could only be construed as a suggestion.

“Q. Dr. Benson, I have here a copy of what purports to be a letter written by Bruce Zimmerman, M.D., Secretary-Treasurer of the Washington State Medical Association, to Mr. Rosling, dated April 10, [2329] 1952, and it states, ‘On April 9, 1952, at the April 9, 1952, meeting of the executive committee of this association, following action was taken relative to the American Medical Association Judicial Council decision in the Dr. Miles H. Robinson matter, “legal counsel being instructed to prepare a critical analysis of the communications concerning the Judicial Council decision for the president’s signature to be approved by the board of trustees, and that the Walla Walla Valley Medical Society be informed this matter has been taken under advisement and will be submitted to the board of trustees for its consideration.

“ “ “Dr. Benson intimated last evening that he wished to present this analysis to Dr. Klein when they met on the 16th. With this in mind, am enclosing a copy of the ‘decision.’ Doubtless you will discuss it with Dr. Benson, and send it to his Bremerton office to same time.” ’

“Now, I wonder what that intimation was, that is, I want to ask first if you [2330] recall what you did say to Dr. Zimmerman along these lines that constituted this intimation?

“A. Relative to discussing it with Dr. Klein?

“Q. Yes, and asking for this memorandum.

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“A. What I said to Dr. Zimmerman?”

“Q. Did you ask Dr. Zimmerman to have Mr. Rosling prepare this memorandum about the case?”

“Mr. Rosling: The letter recites that the executive committee requested it.

“Mr. Sembower: That is true, but it says that Dr. Benson intimated last evening that he wished to present this analysis to Dr. Klein.

“The Witness: What is your question?”

“Q. (By Mr. Sembower): Do you remember the discussion about this analysis? A. No.

“Q. And the trustees? A. No.

“Q. Did you intimate that you wanted to present this analysis to Dr. Klein when you saw him on the 16th of April, 1952?”

“A. Well, it so states. [2331]

“Q. Did you get the analysis?”

“A. That I do not recall.

“Q. Do you remember discussing it with Dr. Klein?”

“A. I may have, but I could not recount any discussion.

“Q. I get the impression, Dr. Benson, at this time, that you had a much more active role in that than appears from our questions and answers today in light of your recollection. Is that true?”

“A. Well, as I stated before, I had a very definite stake in this in the regard that I was pledged to the upholding of the constitution and bylaws of the state association in my official position as president of the association. I guarded that responsi-

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bility very highly, and in deference to that I was making every effort to see, too, that we were abiding by the rules that had been set forth for the conduct of the state association.

“Q. Did you also feel that the Robinson case might be a great reflection upon the state association? [2332]

“A. I feel that any violation of an existing rule or regulation could be a reflection and I was guarding against there being a violation.

“Q. But you don't ever remember discussing this with Dr. Klein?

“A. I may have, but if so, the gist of our conversation certainly escapes me.

“Q. I have here a copy of a letter—it doesn't bear any signature—it is our information from some of these depositions that this was written by Miss Jane Lawrence. It is dated April 17th, 1952, addressed to Dr. Benson, and states, ‘Dr. Tompkins of Walla Walla called yesterday to acknowledge receipt of data supplied him from this office with which he would prepare a brief on that society's petition for a rehearing of the Robinson matter. He stated that he was preparing the brief with the cooperation of the society's counsel, Mr. Kimball, who has full knowledge of the case from the outset. The petition will be heard by the Judicial Council on April [2333] 25th in Chicago, he said. I gathered from his conversation that the society's brief would attempt to defend procedures followed in the society's hearing of the case. Dr. Tompkins will fur-

(Deposition of R. A. Benson.)

nish the state office with a copy of his brief and supporting documents. Mr. Neill discussed with me what had transpired at San Francisco and authorized me to tell Dr. Tompkins the matter had been discussed informally and unofficially with Dr. Klein, and that the situation did not look too bad. I told Dr. Tompkins you might request Mr. Rosling to attend the rehearing of the case if the society's petition is granted, to which the former replied, that is quite all right with us.

“‘You and Mr. Rosling will be sent a copy of the brief as soon as it is received here.’

“Do you remember receiving that letter?

“A. No, I don't.

“Q. Now, this relates again to [2334] conversations in San Francisco. Did you participate in those conversations with Dr. Klein? A. I may have.

“Q. Do you have any idea who else might have?

“A. If there were conversations they were entirely personal for information, guidance, and having no bearing, as far as any action was concerned. I think we are all entitled to advice which we obtain through conversation.

“Q. It says here, and I wonder if you have any idea to what this refers, ‘The matter has been discussed informally and unofficially with Dr. Klein, and that the situation did not look too bad.’ Do you have any idea what that refers to?

“A. I do not.

“Q. Had Dr. Klein given any intimation to you or to anybody that you know of that a rehearing

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would be granted? A. No.

“Q. Well, now, we come to the rehearing which was held in Chicago, about which we have been talking so much today, in the spring of 1952. In attendance we find from the [2335] minutes that were presented by Dr. Lull, the names of Dr. Benson, Dr. Zeke, Dr. Jared, Mr. Neill, Dr. Tompkins, Mr. Winikoff, and Dr. Greger.

“I would like to ask if you remember attending that session? A. I do, yes.

“Q. Do you remember about when it was held and where?

“A. My recollection is that it was held immediately preceding the American Medical Association convention and in the Palmer House. That is my recollection.

“Q. Now, do you remember these other persons being present—Zeke, Jared, Neill, Tompkins, Winikoff and Greger?

“A. Yes, I think they were all there. I would not be able to have given you the membership unless it had been stated, but I believe they were all there.

“Q. Did you have any discussion with the Walla Walla people before you went down to this?

“A. Well, I think Dr. Tompkins, being very much concerned about this hearing, may [2336] have spoken to me about it.

“Q. Do you remember what he said to you and what you said to him? A. No, sir.

“Q. You said that he was very much concerned

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about it. How did you know that he was so concerned?

“A. It is my recollection that he made the trip back there solely for the purpose of appearing before the Judicial Council.

“Q. Did he appear in your presence?

“A. I would presume so. It was at the hearing. I was there through all of it.

“Q. Did you make a statement to the Judicial Council? A. I believe I was interrogated.

“Q. Do you remember what you said?

“A. No.

“Q. We will have the transcript on that, I assume. We don't have it, but it is being hunted. The transcript isn't available.

“How soon after that did you learn about the decision of the Judicial Council, the second [2337] decision? A. I cannot answer that, either.

“Q. Did you make any effort to find out what that decision was?

“A. Yes, we would have been very anxious to have known the decision immediately. However, to the best of my recollection it was not forthcoming, and when it was given, I am unable to tell you.

“Q. Did you learn about it on June 15th?

“A. That I cannot answer. I do not know.

“Q. You say you would have liked very much to have learned what the decision was. For what purpose would you have liked to have found out?

“A. I think we are all anxious to know the out-

(Deposition of R. A. Benson.)

come of any controversial issue just through the element of human curiosity, if for no other reason.

“Q. Would there have been nothing more than curiosity which would have caused you to want to find out? A. Yes.

“Q. What would it have been?

“A. My concern regarding the action of the state association. [2338]

“Q. Anything else?

“A. Not that I recall.

“Q. Dr. Benson, would you have been concerned about Dr. Robinson and his career and his practice?

“A. I am concerned about anybody who is fraught with a problem to be certain that he is given fair justice, and if we have tried to comply with the necessary requirements for dispensing that justice, there is a certain absolution that is accorded me in that knowledge.

“Q. If it turns out that in the decision of the highest tribunal in the American Medical Association that this man was wrongfully expelled and outside the membership for more than a year, wouldn't that be an extremely serious matter for a reinstated member of your society?

“A. I think you should be aware of the fact that I had no knowledge of the reasons for Dr. Robinson's difficulties. My concern was not from the standpoint of the factual elements that were involved, but from the standpoint of the [2339] correctness of the procedure that was utilized in deter-

(Deposition of R. A. Benson.)

mining whether the procedure was properly handled.

“Q. You have examined that letter from Dr. Stevens that told you something about this situation, have you not? A. This (indicating)?

“Q. Yes. I believe that even calls Dr. Robinson a blackmailer there.

“A. I don't know if I made my point clear in the regard that I had not weighed the evidence that had been elicited at the time of the hearing in Walla Walla. That, presumably, was the responsibility of the local society to determine whether or not the violation had been perpetrated. It was my concern to be assured that the procedure that had been followed in the subsequent events was proper and correct. That was my concern.

“Q. Now, you have found that it was improper and incorrect, have you not?

“A. Not as far as our existing rule for the conduct of the grievance committee was concerned. We followed those completely. [2340]

“Q. You mean notwithstanding what the Judicial Council said?

“A. Notwithstanding what the Judicial Council said, because as I showed you from our constitution and bylaws there was a subsequent change that was made in conformity with the action of the Judicial Council.

“Q. It was just Dr. Miles Robinson's misfortune that he came along before that happened, is that correct?

(Deposition of R. A. Benson.)

“A. I would not place anybody in the situation of misfortune by virtue of chronology.

“Q. Well, have you ever had a disciplinary action brought against you?

“A. I have been disciplined all my life.

“Q. Have you ever had any charges filed before you in your medical society?

“A. In my medical society?

“Q. Yes.

“A. For my society’s disciplinary action?

“Q. No, action asking that you be disciplined?

“A. No, sir. [2341]

“Q. You never had any experience being on the receiving end of a thing like that?

“A. I have been disciplined all my life.”

Mr. Sembower: That is all.

I ask Mrs. Ruth Robinson to take the stand, please.

RUTH JOHLIN ROBINSON

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Ruth Johlin Robinson.

Q. And what is your address, Mrs. Robinson?

A. 1306 Dulaney Valley Road, Towson, Maryland.

Q. And your occupation? A. Housewife.

(Testimony of Ruth Johlin Robinson.)

Q. You are related to the plaintiff in this action, Dr. Miles H. Robinson? A. Yes.

Q. And what is your relationship?

A. I am his wife.

Q. When were you married to Dr. Miles Robinson? A. On December 26, 1934. [2342]

Q. Mrs. Robinson, have you been generally conversant with the facts of Dr. Miles Robinson's practice as a physician? A. Yes.

Q. Have you assisted him on occasion in his laboratory? A. No.

Q. What has been the extent of your knowledge of his practice as a physician?

A. Well, I was married when he was a freshman in medical school and I have been with him ever since.

Q. Mrs. Robinson, directing your attention to a certain Sunday morning on October the 8th, 1950, were you and Dr. Robinson at home together on that morning? A. Yes.

Q. Do you recall whether there were any incoming or outgoing phone calls on that Sunday morning? A. Yes.

Q. How many were there?

A. One outgoing and one incoming.

Q. Were there any other phone calls that you recall? A. No, not that I recall.

Q. Which was the first telephone that you recall, Mrs. Robinson? A. An outgoing call.

Q. And what was that telephone call? [2343]

A. That was a call made by my husband.

(Testimony of Ruth Johlin Robinson.)

Q. To whom did he make the call?

A. To Mr. Tom Brooks.

Q. Approximately what time, if you recall, did he place that call?

A. Oh, it was fairly early in the morning.

Q. Were you present, Mrs. Robinson, during that telephone call? A. Yes.

Q. What was the gist of the conversation which you heard from Dr. Robinson's end of the telephone?

A. It was a medical discussion about a contagious disease.

Q. And how long did the conversation take place, approximately?

A. Oh, between fifteen and twenty minutes.

Q. Do you recall what the medical discussion concerned, generally?

A. Yes, a social disease that was contagious.

Q. Did you hear in that telephone conversation any mention of a letter? A. Not that I recall.

Q. What was the demeanor of your husband as he carried on that conversation, if you recall?

A. He was explaining something.

Q. Did he seem excited or upset? [2344]

A. No, no. Later, at one point, he was exasperated.

Q. What was the point at which he was exasperated?

A. Well, he said, "I didn't use her as a guinea pig," or something like that.

(Testimony of Ruth Johlin Robinson.)

Q. Do you remember anything else in general about the conversation that you heard?

A. Well, I think I heard him saying, "Well, I have something from the state health department and the local health department to prove that you have this disease."

Q. Mrs. Robinson, then on the telephone conversation to which you referred, do you remember approximately when that call was received?

A. It was later in the morning.

Q. Who answered the telephone on that occasion? A. I did.

Q. Did you recognize the voice of the person on the other end of the telephone?

A. Well, English accent.

Q. Have you since heard that voice on various occasions?

A. Yes, many times now here in the courtroom.

Q. And whose voice was that?

A. Mr. Tom Brooks' voice.

Q. What, in general, Mrs. Robinson, was the gist of that conversation, if you recall?

A. It was a very short conversation and my husband said [2345] something about, "This is ridiculous," and that is all I recall.

Q. Mrs. Robinson, do you and the members of the Robinson family know Dr. Pratt very well?

A. No, I would say not.

Q. What would be the extent of the acquaintance which your family had with Dr. Pratt?

A. Well, I think my father-in-law met him at

(Testimony of Ruth Johlin Robinson.)

tea once, and they did entertain my family but except for inviting him to tea once I never have invited him to any social occasion at our house. I have invited his wife and his children but I never invited him.

Mr. Sembower: That is all, your Honor. We will offer Mrs. Robinson in connection with damages in another phase of the case, but that is all at this time.

Mr. Kimball: No questions. [2346]

* * *

The Court: You may rest, and then I think it is too late to continue on tonight any way with anything further. If there are any exhibits you have overlooked, you have the privilege of offering them in the morning or supplying any deficiency you may have overlooked at that time.

Mr. Sembower: Thank you.

The Court: I assume that there will be motions here for dismissal?

Mr. Rosling: Yes, your Honor.

The Court: I would like to say this, that I don't know whether it is practical or not, but I would like to not take too much time with those motions. I have this feeling about it, that, after all the time we have spent for this trial and considering the character of it, it is a case, particularly on the conspiracy feature, that should be decided by the Court on all the evidence and not on motion to dismiss. The restrictions on the Court are very marked in

a case of that kind. As I view it, on motion to dismiss, I have to view the evidence the same as I would if we were trying the case before a jury and a motion was made for a directed verdict at the conclusion of the plaintiff's case; I am obliged to resolve all conflicts in favor of the [2347] plaintiff. If there is a conflict of testimony, I must take the testimony as favorable to the plaintiff and the plaintiff is not bound by unfavorable testimony of these adverse party witnesses whom he has called, and I think the Court, too, is obliged to place the most favorable, reasonable inference that may be placed on the evidence in arriving at a conclusion, and I think that certainly as to most of the defendants, any way, I think it would be preferable from my standpoint to decide it on all the evidence. There would be a great deal of difference if the defendants immediately rested and submitted the case because there is an entirely different situation, particularly in view of the fact that the defendants contend that evidence of the conspiracy must be established and the plaintiff has the burden of establishing it by clear, cogent, convincing proof.

So, while I am not trying to cut you off from making the motions or from arguing them, but I suggest that you not take too much time regarding them, and I have this suggestion: That as to those defendants as to which the motions are denied, I see no reason why you can't adopt the testimony that has been given here by the defendants. I don't think it is necessary for you to go over all that ground again and make a record as to the [2348]

testimony. If there are some things that have been omitted, of course, that is a different situation.

And, also, of course, on these motions, I would not be in a position to determine whether or not the Brooks complaint was entirely unfounded and not based on factual foundation. I have to assume that it was a false charge that was made by Mr. Brooks because that is the purport of the favorable testimony of the plaintiff.

Mr. Rosling: May I make one comment, your Honor?

The Court: Yes, surely.

Mr. Rosling: The Court has referred to a rule, I think, which we are all familiar with because it prevails in the Superior Court, that upon a motion of this sort, the Court is required to resolve all doubts in favor of the plaintiff and all reasonable inferences construed in favor of the plaintiff, and so on. But this motion is based upon Rule 41(b) and the courts have held that the purpose of that rule, expressed as it is, is to eliminate just what the Court has suggested as controlling you as to the manner in which the evidence should be viewed, and we have authorities to this effect, that under 41(b), the Court, on a motion to dismiss, it is the duty of the Court to weigh the evidence just as if all of the evidence were in, [2349] and that this principle of presuming everything in favor of the plaintiff and disregarding unfavorable evidence, and so on, no longer obtains following the 1948 amendment to Rule 41(b).

The Court: Well, I will take a look at that rule

if that is the one under which you propose to base this motion.

Mr. Sembower: Your Honor, not wishing to interrupt, but this impresses me as argument. Of course, our position is entirely different from Mr. Rosling's. I am learning of it for the first time and it is new and unusual, I should say, but I don't think that we should go into the argument at this time unless it is the pleasure of the Court.

The Court: Well, I hadn't in mind going into the argument upon any of the motions, but I think I invited comment certainly by my remarks on what the basis of the motion should be and what the Court's attitude toward the evidence should be.

Mr. Rosling: I realize the Court is away from his own library and I have here Volume II, Federal Practice and Procedure, Barron and Holtzoff, and I would suggest that the Court look at Pages 642 and 612, which is the opening of the chapter, and the Court will see what I have in mind. [2350]

Mr. Kimball: That is the rule upon which all of our motions are based or will be based.

The Court: I think that you should be heard on this in the morning, if you care to be, on what the basis of the Court's view on the evidence should be on a motion to dismiss. I had assumed it was the usual, conventional motion that we are all familiar with in the old practice.

Mr. Rosling: Well, I am sure that the reading of those two citations will clear the matter up.

The Court: Yes, all right.

Court will adjourn, then, until tomorrow morning at 10:00 o'clock. [2351]

* * *

Mr. Rosling: May it please the Court, the Washington State Medical Association moves for a dismissal of this action on the ground that upon the facts and the law, the Plaintiff has shown no right to relief. [2361]

* * *

Mr. Freise: Okay, it seems as though they indicate I am supposed to make my motion at this time.

Well, your Honor, in order to set the record straight, also, I haven't had much opportunity to get this into the record, that the true name of the Walla Walla General Hospital is the Upper Columbia Medical Missionary and Benevolent Association, and somehow or other they have always referred to it as the Walla Walla General Hospital.

And under and pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, I make this motion in behalf of the said Walla Walla General Hospital for an involuntary dismissal of the above-entitled cause as to this particular defendant on the ground and for the reason that the Plaintiff has shown no right to relief as to this defendant, the Walla Walla General Hospital.

* * *

Mr. Smith: May it please the Court, the Sisters of Charity of the House of Providence, a corporation, a non-profit [2366] corporation, known in this action as St. Mary's Hospital, moves for an in-

voluntary dismissal of this cause pursuant to Rule 41(b), Federal Rules of Civil Procedure, on the ground and for the reason that upon the facts and the law, the Plaintiff has shown no right to relief as to this defendant.

Mr. Tuttle: If the Court please, all the defendants in this case represented by Mr. Kimball and myself, being all the defendants other than the two hospitals and the state association, now move the Court pursuant to Rule 41(b) of the Federal Rules of Practice and Procedure for an order of dismissal on the grounds and upon the facts and the law, the Plaintiff has shown no right to relief. [2367]

* * *

Now, in the light of that, I want to discuss with the Court the circumstantial evidence that might be in this case. So far as I can determine from having listened [2396] to this testimony, there isn't a scintilla of evidence in this case that at any time any one of these defendants agreed to wrongfully expel Dr. Robinson from the society, and it seems to me that to get down to the point of this case and not to make an argument, as the Court suggested he didn't want to hear of attempting to negate the evidence which has been produced, it seems to me to get down to the basis of this thing, that the plaintiff was going to have to prove two things in order to prove conspiracy in this case: (1) He was going to have to prove that there was no foundation in fact for a complaint to be made by Mr. Brooks to the society, and (2) he was going to have to prove by

clear, cogent and convincing evidence, and keeping in mind the rule of circumstantial evidence, that there was no basis in fact for the board of trustees or the society, the Walla Walla Medical Society, to believe the complaint.

If this were a case where Dr. Robinson had denied that he had ever had any contact with Mr. Brooks or that he had ever had any telephone conversation in which the discussion of the revelation of the disease had been contained, or had he denied that he had ever conditioned the disclosure of the disease upon the demand which he made for the letter, then there might be evidence to weigh with reference to whether or not the defendant had acted in good faith in removing Dr. Robinson from the society; but on the record [2397] before this Court and on the record of Dr. Robinson's own testimony, not going outside of that, the evidence will conclusively show that there was a basis for Tom Brooks to act and that there was a basis of fact for the board of trustees of the Walla Walla society to submit their findings and recommendations to the society meeting as a whole and that there was a basis in fact for the society to find Dr. Robinson guilty and to impose the punishment which it did, and, that being true, there can be no inference of any conspiracy; the rest of everything that is in this case, day after day after day of testimony, is merely a suspicion which lurks in Dr. Robinson's mind and which apparently has been lurking there since August the 11th, 1950, when he wrote his letter criticizing the bureau.

Now, Mrs. Robinson testified as the last witness yesterday and on behalf of the plaintiff in response to a question by Mr. Sembower that in the Sunday morning telephone conversation which Dr. Robinson had with Tom Brooks that no mention was made of a letter. Well, I admit, your Honor, that Mrs. Robinson may not have heard or she may have forgotten about it, but the testimony of Dr. Robinson himself is to the effect that he did mention the letter in that Sunday morning conversation and that he did make that a condition, the production of that letter, of his not disclosing to the public health authorities the disease for [2398] which he was treating both Mr. and Mrs. Brooks.

In connection with that, I want to quote from a transcript of the testimony in this case, commencing at page 942—

The Court: That is the plaintiff's testimony in this trial?

Mr. Tuttle: In this trial, your Honor, yes.

(Reading.)

“Q. All right, and what did you do on Sunday morning when you talked to him?”

This is following the discussion about the Sunday morning conversation, telephone conversation, with Mr. Brooks.

“A. Well, you see, Friday night the last thing that Tom Brooks said to me was, he said in connection with my asking him if he couldn't come in and get this question settled about his treatment and proper diagnosis, further diagnosis.”

I have merely cited that to point out that what follows is in relationship to the Sunday morning conversation between Dr. Robinson and Tom Brooks. Proceeding then to page 944, question by Mr. Tuttle:

“Q. Well, then, did you discuss the letter again, about bringing the letter in again, on the Sunday morning conversation? [2399]

“A. The letter came up in the conversation, yes.

“Q. And did you make that a condition of continuing your relationship with Mr. Brooks and the rest of the family, that he bring that letter in?

“A. Well, I think that that is generally speaking a fair statement as far as Mr. Brooks is concerned. I told him, ‘The situation is really urgent with regard to your health, much more than I had appreciated, and from the standpoint of the family and the people that are exposed to you, and,’ I said, ‘I am willing to take care of you, but I expect our relationship to be on a frank and open basis and one of the things that has come up is this matter of the letter, and if you are going to come in, I expect you to bring the letter with you.’ ”

And again quoting from page 946 of the transcript of the testimony in this case, Dr. Robinson being cross-examined:

“Q. I am referring now to your deposition in this case, Doctor, at page 270, at line 18:

“ ‘Q. Let me ask the question this way, and I will waive the former question. [2400] What would Mr. Brooks have had to do to prevent you from re-

porting his condition to other members of his family and the health authorities? Do you object to that?

“ ‘Mr. McNichols: No.

“ ‘Come into the office.

“ ‘Q. That is all?

“ ‘A. Well, I made it a condition that I wasn't interested in having these people come in unless they brought the letter with them. They made the letter a big issue, not I. This mysterious letter floating around that nobody knew where it was and they hadn't received it a week later, so I naturally made that a condition because by that time they were, I thought, pretty deceitful about the whole thing and I was willing to work out what I could with them, but I wanted them to come clean on this letter.’

“ ‘And now, would you say you made it a condition of continuing your relationship with the family that they bring the letter in to you?’

“ ‘A. I believe that by that time that it had become a condition of my continuing a relationship with them.’ [2401]

So I submit, your Honor, that on the first point, was there a basis for Tom Brooks to make a complaint about having been threatened, that Dr. Robinson would reveal the disease to the health officer and his family if that letter was not brought in, cannot be in question in view of the very testimony which Dr. Robinson gave which I have just read to the court in which he repeatedly stated that he had made the production of that letter by Tom Brooks, that is, to get it from his son-in-law and

bring it into the office and produce it for Dr. Robinson, had been made the condition, the Doctor testified that that was the thing that he would have to do to avoid Dr. Robinson's reporting him to the health office. [2402]

* * *

The Court: Surely it isn't your position that because they were misguided and used the wrong procedure, that that would make them members of a conspiracy. Do you think that their bad faith or bad purpose, as you construe it, was directed against Dr. Robinson or was it directed [2451] against anybody who might come within the orbit of their procedure?

Mr. Sembower: Well, I would say it was directed against Dr. Robinson.

The Court: When did they get that wrongful purpose and intent against Dr. Robinson?

Mr. Sembower: Well, I would say that the first point at which they got it was the letter—however, everything starts with a small beginning—the letter which was sent out on October the 16th from Mr. Fullerton to Mr. Neill.

The Court: Inquiring about whether there was a state grievance committee?

Mr. Sembower: Inquiring, that is correct.

The Court: Well, in that letter, he didn't mention Dr. Robinson.

Mr. Sembower: No, that is correct, at that time. And then instead of outlining procedures or saying there was no committee, they indicated that there was going to be a procedure or was one available.

The Court: I don't wish to disturb your argument; I want to hear it fully, but, Mr. Sembower, will you tell me this: In all these procedures that were taken by the state grievance committee, what would they have done differently if they were in good faith trying to process a legitimate grievance that had been made to the local society? [2452]

* * *

Now, so far as Dr. Robinson's testimony is concerned, he didn't testify that the letter was the crucial thing at all in dealing with the Brooks family. Examination of his testimony shows that this family had been a problem to him. Mr. Tuttle said this morning it would seem to be the kind—

The Court: Do you have reference to his testimony before the Court here and not testimony before the board of trustees?

Mr. Sembower: Well, his testimony before the board of trustees was to the same general effect.

The Court: He said in there, I think, that the letter [2467] was very, very important, it was a matter of great concern to him, it was the straw that broke the camel's back.

Mr. Sembower: Well, I think that is true.

The Court: He made much of the matter in the testimony.

Mr. Sembower: Yes, it was the straw which broke the camel's back so far as that was concerned.

Now, to read the blackmail statute of Washington in that connection, I don't know what the property

is, I suppose there is property in a letter. He didn't ask that they give him the letter.

The Court: I am not impressed with that [2468] argument.

* * *

ORAL DECISION OF COURT ON MOTIONS

The Court: At the outset, I think I should refer briefly to the manner in which the Court should regard the evidence and the testimony when a motion is made for dismissal by the defendants, as has been done in this case, [2492] under the provisions of Rule 41(b), and I again emphasize this because of my obvious misconstruction, I think, of the effect of that rule at one stage of the proceedings.

The rule without question, I think, contemplates that the Court may in its discretion at the close of the plaintiff's case take a look at the evidence and, as trier of the facts, find what those facts are, and if the facts and the law show that the plaintiff is not entitled to relief, may render final judgment on the merits. Under this rule, if the Court does elect to take this course, the burden does not shift to the defendants, but remains with the plaintiff, and the Court necessarily must resolve conflicts in the testimony, as he would do at the conclusion of the case where a jury has been waived.

This rule was so construed even prior to the 1948 amendment. It was so construed by the Ninth

Circuit Court of Appeals, which is the immediate superior of this Court, the next Court up in the judicial hierarchy. The only purpose of the amendment was to make it clear that the Civil Rules Committee and the Supreme Court adopted the view of the Ninth Circuit and the other jurisdictions which gave the interpretation to the rule which I have just stated. I think this will become clear in reading short excerpts from the opinion of the Ninth Circuit Court of Appeals in the case of *Barr vs. Equitable Life Assurance Society*, which is reported [2493] 149 Federal (2d), 634, which was decided in 1945 before the adoption of the amendment, and the opinion is written by Judge Denman, who is now Chief Judge of the Ninth Circuit Court of Appeals. In the course of the opinion, he states:

“The trial proceeded to the conclusion of the plaintiff’s evidence * * * This court in *Young v. United States*, 9 Cir., 111 F. 2d 823, 825, held that Federal Rules of Civil Procedure 41 (b), 28 U.S.C.A. following section 723c determines the procedural place at which the court in a jury-waived case, may decide upon the evidence offered on the issues raised by the pleadings. Rule 41 (b) provides that such decision on the merits may be made after the plaintiff’s evidence is submitted: * * *

“To us the rule embodies sound common sense. It would be absurd to waste the court’s time and to impose upon the parties, both waste of their time and that of their counsel and witnesses, together with the unnecessary expense, in offering the defendant’s evidence, [2494] which, with reasonably

efficient advocacy, would do not more than enlarge the record.”

Now, in this case the reliance of the plaintiff has been upon conspiracy, or perhaps more accurately stated, the injuries resulting from the consummation and carrying out of an alleged conspiracy, and the importance of reliance upon conspiracy, and I think the proper reliance by astute and capable counsel for the plaintiff, is that here we have a situation where the individual defendants, with the exception, of course, of Mr. Edwards and Mr. Brooks, as to practically all of the acts and declarations which were relied upon here in the voluminous documentary evidence with which this case is documented, that practically all of those acts and declarations were done and made by these defendants as officers and agents of the corporate defendants; Mr. Fullerton as secretary, other defendants in various capacities at different times, as president, trustee, members of the grievance committee, of these local medical corporations. And it seems to me, under the law as I understand it and it has been contended here without too much conflict by the opposing parties, in the absence of conspiracy and in the absence of bad faith and wrongful conduct of some sort on the part of these officers and agents of the corporations, the mere fact that they may have made [2495] a mistake in procedure, as held by their highest medical judicial authority, would not make them individually and personally liable for damages in the absence of some wrongful concert of action or conspiracy. A person ordinarily acting in good

faith for a corporation under these circumstances would not be liable if it turned out that the higher echelons of the society determined that the proper procedure had not been followed.

That, I think, is good common sense, as well as law. I don't see how otherwise a society of this kind would ever dare take disciplinary action against a member. They would be gambling upon being personally liable in large sums in a court action in case the higher tribunal which they had set up should disagree with them as to whether they had strictly complied with the requirements of their constitution and bylaws. It would be just as impractical, I think, to provide that in case of an appeal in a civil action from this court, that in case the court was reversed by the Court of Appeals of the Ninth Circuit or by the Supreme Court, that not only the judge of this court, but that the clerk and the bailiff and all of his supporting personnel should be personally liable for damages that may have resulted to the losing litigant by reason of the reversal in the higher court.

So that I think the gist of this action [2496] necessarily had to be conspiracy, that there had to be something more than merely good faith acting by these defendants in the course of their representation of the corporate defendants in carrying out its purposes.

Now, I think it is obvious that the conventional definition for conspiracy that we usually find in the criminal cases doesn't apply literally to civil cases. There need not be a criminal act done in an unlaw-

ful manner or a lawful act done in an unlawful manner. There isn't any implication of criminality, of course, in a civil conspiracy; it simply means that there must be an unlawful conspiracy agreement to injure another person substantially in his personal or property rights, and, of course, it isn't necessary to prove that there was a formal or express agreement; it is sufficient, as has been pointed out here, if there has been a concert of action, combination, implied, tacit agreement to do something that will injure another. It may be, and usually must be, established by circumstantial evidence, but the fact remains that it must be shown that there was something wrongful, wrongful purpose, combination, and concert of action, to injure another.

I think I should point out in this introductory way that once the conspiracy has been established, each member is legally responsible for the acts and declarations of every other member, but unless and until the conspiracy [2497] has been established, the acts and declarations of an alleged member are binding only upon himself, and membership or participation in a conspiracy may not be proved by the acts and declarations of alleged co-conspirators.

Now, much has been said about the burden of proof here in this case. I am not too much concerned about that, whether it should be by preponderance of the evidence or clear, cogent and convincing evidence, because I have come to the conclusion that there isn't any conspiracy here, but I think that a statement by the Supreme Court of this state in the

case of Charles Baun against Lumber and Sawmill Workers Union, reported in 46 Washington (2d), 645, is quite pertinent and very helpful in the decision of this case. And I wish to point out that this being a diversity case, the substantive rules of law that govern the court here and are binding on the court are the substantive law as announced and adopted by the Supreme Court of this state. Mr. Justice Frankfurter has remarked that in a diversity case, that is, where the jurisdiction of the court depends upon the parties being citizens of different states, that the Federal Court really acts as another court of the state, and what is substantive and what is procedural has been given a very unusual definition in the cases following *Erie vs. Tompkins*, *Guaranty Trust Company vs. York*, and others. In those cases, the Supreme Court has gone so far as to say that [2498] almost anything that would substantially affect the result of the lawsuit must be considered as substantive in the sense that the Federal Court is bound to follow the substantive law of the state.

So that here, I think, the essence of the conspiracy and the method in which it must be established are substantive in that sense and are binding on this court.

And in this opinion to which I have referred, and I am reading now from Page 656 of the opinion, the Supreme Court of Washington states:

“While it is recognized that a conspiracy may be, and usually must be, proved by acts and circumstances sufficient to warrant an inference that the de-

defendants have reached an agreement to act together for the purpose alleged, the test of the sufficiency of the evidence is that the facts and circumstances relied upon to establish the conspiracy must be inconsistent with a lawful or honest purpose and reasonably consistent only with the existence of the conspiracy. As stated in *Harrington v. Richeson* (1952), 40 Wn. (2d) 557, 245 P. [2499] (2d) 191:

“ ‘Where the facts and circumstances relied upon to establish a conspiracy are as consistent with a lawful or honest purpose as with an unlawful undertaking, they are insufficient.’ ”

And then a number of prior Washington decisions are cited here.

I think that is particularly pertinent here, because, as I have said before, here we have a situation where these defendants, for the most part, were acting as officers, agents and representatives of the local medical corporations, and it isn't sufficient to show that their acts could be construed as being wrongfully directed against this plaintiff in order to accomplish his improper expulsion, if they are equally consistent with what these people would have done if a valid complaint had been presented to the society and they were acting in the course of it and doing their duty as best they saw, it was consistent with that sort of an interpretation and the evidence is insufficient.

Now, looking at the case as a whole, I have come to the conclusion—and I remarked awhile ago I am not greatly concerned about the question of

burden of proof, because after having this matter fully presented and after considering the documentary evidence and hearing most of the individual defendants testify and having the benefit of [2500] those intangible factors that come from seeing witnesses, hearing them, sizing them up and judging what their motives are and what credit may be given to their testimony, and, as I say, I think that is one of the skills that come with practice on the trial bench; I have found it so—I have come to the conclusion that not only is there insufficient evidence of a conspiracy, but there never was a conspiracy in fact in this case.

Now, in the first place, there isn't any evidence here, certainly not a scintilla of evidence, that either Mrs. Edwards or Mr. Brooks were in any way influenced or induced by any of these other defendants to make these complaints, and almost without exception the circumstances upon which the plaintiff relies are as consistent with good faith effort to deal with a bona fide complaint and a troublesome situation existing here in Walla Walla as they are with the inference that they were motivated by a conspiracy or a bad purpose to unlawfully expel the plaintiff from the medical society. I think everything that happened to the plaintiff, when we look back upon it, take a common sense view of what transpired here, unfortunate and regrettable as it is, and as the Court views it, was the logical and natural result of his own conduct.

I am not specifically impressed by the argument that I should find a conspiracy here because it ap-

pears that [2501] there was resentment on the part of some of these defendants, common, I think, to members of the medical society, resentment against the plaintiff because of the attacks he had made upon the medical bureau and the grievance committee, because I think the resentment was caused by the attitude of the plaintiff and by the things that he did and the manner in which he did them and the intemperate way in which he carried on his attacks and his lack of regard, shall we say, for factual accuracy in his criticisms of the Edwards complaint and the letter that the grievance committee had Mr. Fullerton send out to Noel Edwards. In other words, I think that the most that you can say on that phase of the case is that the plaintiff's acts and the manner in which he conducted himself created an unfavorable atmosphere in which he was tried for expulsion and his defense would probably have been accelerated, as any attorney could have told him; if he had conducted himself differently, his chances of not being expelled would have been better. He made himself unpopular, I daresay, with his fellow physicians, just as the same kind of conduct would have made him unpopular with the members of a labor union or Chamber of Commerce or a church congregation, but I don't think that that sort of attitude, which his conduct induced, is to take the place of the evidence that is required to show an unlawful conspiracy.

Now, it is my finding and my conclusion, viewing [2502] these facts, that throughout these pro-

ceedings there was substantial compliance with the procedural due process provisions of the constitution and bylaws of the local medical society and the state medical association; that there was factual substance to the Brooks complaint, so that it cannot be said that the board of trustees of the local society acted injudicially or capriciously or arbitrarily in a finding that it was well founded from the evidence which they had before them, and that it appears from the evidence that these defendants and each of them throughout all these proceedings acted in good faith.

I do not propose to go into the evidence or the exhibits in detail. It would be an impossible task and the space of time would make it impractical. I do think it might be helpful, however, to consider just how this whole series of events came about and how it started in the first place.

I find no evidence whatsoever that there was any bad feeling toward Dr. Robinson or any disposition on the part of the other members of the medical profession here to resent him prior to this Edwards complaint episode. The grievance committee was established, I think as the evidence shows here, because the American Medical Association thought it was a good idea to promote better public relations between the doctors and their patients, perhaps having in mind in the background the bogey man shadow of socialized medicine. [2503] At any rate, it was thought good policy on the part of the American Medical Association to have these grievance committees, primarily for the purpose of ironing out differences between doctor and patient, keeping

people better satisfied, keeping down complaints, promoting public relations.

Dr. Stevens in some way, reading the literature, or he told about finding out about it, thought it was a good idea, became sold on it, thought it would be a good idea to put it in practice here, so that Walla Walla was one of the first places in the country, as I recall the evidence shows, in which the plan was actually adopted.

I don't think there is anything sinister or to be given great weight that the membership was kept secret. I think that the then president, at least the leaders of the society here, thought it was best to protect the members of the committee from undue annoyance by having people call them up at their residences, perhaps, at all hours with complaints, and that to afford them protection in that way, it was thought best to have the membership kept secret.

And I don't think it is at all unusual or strange that there weren't a full set of regulations immediately adopted or that the committee didn't meet each time with formal notice and sit around a table and take up things in that way. That isn't the way these—I won't say small [2504] towns, because Walla Walla isn't a small town—but shall we say medium sized cities, it isn't the way committees operate. A chamber of commerce committee wouldn't operate that way. The chairman would get in touch with one or two of the other members and say, "Shall we do so and so? Sure, it is a good idea, let's go ahead and do it." And I don't think any great importance

should be placed upon the manner in which the committee operated. It was new and it took them time to get their method of operation worked out.

I think Dr. Stevens was genuinely enthusiastic about this plan and motivated by the best of purposes, and when the Edwards complaint came along, was made to Mr. Fullerton, just like an enthusiastic duck hunter getting a chance to try out a new gun, here was a chance to try this out and he was going to do it. And the committee being secret, of course, it was perfectly natural that they direct the secretary, Mr. Fullerton, to write to Mr. Edwards and tell him what the conclusion of the committee had been without giving the names of the committee, and I don't think it is a circumstance, one that is entitled to great weight, that this happened to be written out on the Walla Walla Service Corporation stationery, rather the medical society stationery, because they had common offices and I suppose stationery in adjoining drawers and the letter was written out in that way. [2505]

I might say first that Dr. Stevens did go, of course, as the evidence shows, and talk to Dr. Robinson and he didn't get much encouragement there. As a matter of fact, there was lack of co-operation and rather a surprising and, one would think, an unexpected reaction to his friendly efforts to adjust this difference between Dr. Robinson and his patient, and he was told, in effect, that Dr. Robinson didn't think it was any of his business to meddle in such a way, but he went ahead anyway and he sent out this letter. And I had great difficulty in trying to

get Dr. Robinson's construction of this letter in accordance with the way he construed it at the time. I think Dr. Robinson is too intelligent, too brilliant a mentality, to read into this letter the things that he did, unless he just simply wanted to make a great to-do about it and wasn't too scrupulous about the accuracy of his comments regarding it.

This letter to Mr. Edwards, I think, makes it perfectly clear that Mr. Fullerton didn't make the investigation or that Mr. Fullerton wasn't making the criticism; that Mr. Fullerton was simply informing Mr. Edwards of the action of the grievance committee regarding this complaint. This is Plaintiff's Exhibit 15 and the body of it is:

“Dear Mr. Edwards:

“Your complaint against Dr. Robinson has [2506] been investigated by the Grievance Committee and the following is their report:

“‘Dr. Robinson was questioned regarding the incident and the facts were substantiated with the exception that Dr. Robinson had called the patient's home several times and was unable to contact the relatives since the child had been taken to another home. The Grievance Committee feels that that it is unfortunate that the dissatisfaction had occurred and feels that some of the responsibility is probably due to the excitement at the time.

“‘The charge of \$1.50, which Dr. Robinson made for the telephone calls and the time taken away from his usual other work, does not amount to very much,

whereas the majority of doctors in the community do not charge for telephone calls, there is nothing to prohibit them from doing so, and it can be shown to be justified since [2507] a doctor assumes responsibility when he gives advice either personal or over the telephone. He cannot be expected to assume such a responsibility for nothing.

“ ‘In this case, however, since there was a misunderstanding regarding the prescription, the Grievance Committee feels that the best interests of all concerned should be to drop the matter leaving the bill of \$1.50 unpaid, especially since the little patient seems none the worse for her experience.’

“Sincerely yours,

“C. E. FULLERTON,

“Committee Secretary.

“cc: Miles H. Robinson, M.D.,

“Drumheller Bldg.,

“Walla Walla, Wash.”

That letter was dated the 30th of September, 1950, and on the 9th of October, Plaintiff's Exhibit 16, Dr. Robinson writes this letter regarding it to Dr. Sam R. Page, then President of the local medical society:

“Dr. Sam R. Page,

“Drumheller Bldg.,

“Walla Walla, Wash.

“Dear Sam: [2508]

“As President of our Society, I am writing you with regard to a very peculiar communication which I recently received, signed by C. E. Fullerton, Com-

mittee Secretary. The letter is marked 'Re: Report of Grievance Committee, Dr. M. H. Robinson, Date of Complaint 8/29/50, Date of Finding 9/27/50.' I presume from this that the committee of which Mr. Fullerton is secretary is this Grievance Committee.

"It may be that you know that Mr. Fullerton is taking it upon himself to send letters to the public analyzing, criticizing, and passing judgment on the conduct of a medical doctor's practice; but I want to make sure that you and the other officers of the Society are, in fact, aware of this before it goes any further. Enclosed is a copy of his letter.

"So far as the letter itself is concerned, its inaccuracies are only surpassed by its extraordinary insolence. I deny absolutely the right of either layman or doctor to officially censure me regarding my financial arrangements with my patients. [2509] Rather more serious, were it not so ridiculous, is the right of Mr. Fullerton to send letters to my patient stating categorically that certain telephone calls did not take much time from my work and did not amount to very much. This extraordinary insight into the nature of my work, the time it takes, and its true worth can only be the product of a vivid imagination uncontaminated by anything remotely resembling the training and experience of a doctor of medicine.

"I am trying not to jump to conclusions, but it seems to me that this letter is typical of the authority which Mr. Fullerton exerts. I believe that it is imperative that all other members of the Society be acquainted with the facts in this case and the

principles involved, and that his resignation from any official position with our Society be arranged at the earliest opportunity.

“So far as the recommendation of this letter to the patient that my bill not be paid, it naturally means absolutely nothing [2510] to me. The opportunity will doubtless present very soon when I can discuss with the parents of ‘the little patient’ the uncertain guidance they are getting in this letter.

“I hope it will not become necessary for the Society to publicly disclaim the occult workings of this Grievance Committee which it has elected; and for my part, I will do what I can to keep the thing quiet. But as you can see, the provocation to me is extreme.

“As soon as it might be convenient, I would like to talk this over with you; but I am sending you this note immediately on learning that Fullerton’s letter reached the patient’s father, since I think you would like to know about the matter without delay.”

That is October 9th. Three days later, Dr. Robinson writes, I believe, the first of his series of numerous “Dead Doctor” letters to the other members of the medical society in Walla Walla. This one is October 12, 1950, Plaintiff’s Exhibit 20:

“Dear Doctor: [2511]

“Would you like to have an official committee of your local medical society write a letter to one of your patients and discuss the quality of your medical service?

“What would be your reaction if this letter stated that your medical service did not take much of your time and advised the patient not to pay your bill?

“Would you feel better if the executive secretary of the committee informed you of the affair by sending you a carbon copy of the letter?

“If a patient had a complaint about your work, would you like to have all such complaints cleared through a layman who has authority from the committee to investigate the complaint, check the veracity of the complainer, hold up or continue the matter, and so forth?

“The present lay investigator and the present Grievance Committee might treat you with entire justice, assuming they could ever learn enough about your patients' diseases to do so, but with this set-up and this precedent, it is pleasant to [2512] contemplate what official letters might be written to your patients if a new lay investigator and a new secret committee were appointed in the future and said parties happened to be, for reasons of their own, prejudiced against you?

“I have put these questions in a personal way, because I deeply believe that this issue is extremely important to every one of us. Enclosed you will find a copy of just such a letter as I have described above, which was sent, without consulting me, to one of my patients 12 days ago. Also enclosed is my protest to our President and the other officers of our Society.

“As I said at our last business meeting, I fully accept, as we all must, the right of the Society

to investigate alleged malpractice; said malpractice, as I understand it, is harm done to the patient which represents medical service 'below the standard of the community' as the courts have defined.

"But I cannot accept the right of anyone, doctor or layman, to get his hands on the private trade which I made with a patient, [2513] whereby he and I decide how much of his labor will be traded for the labor of my service to him."

Now, the letter is long and I am not going to read all of it. He does say that:

"What the committee is trying to do in my case is enforce a low price in restraint of trade. Despite its fine words about telephone charges, its decision is that the medical service over the telephone should have been free of charge. This causes my work as a whole to that patient to be rendered at a lower price. Each doctor is obviously an independent business in himself, and a fixed low price restrains his business just as definitely as a fixed high price.

"For if the doctor is held to a fixed low price, his only escape from financial suicide is to limit himself to patients who will stand for the quick visit and large patient volume characteristic of prepaid medicine. So in this particular stage of medical history, a fixed low price forced the doctor into prepaid medicine. [2514]

"In medicine we know that the public rightfully expects high quality service. When a patient puts his health in a doctor's hands, he expects advice and treatment based only on that doctor's skill, honesty and idealism. Every case is an individual problem, which should be handled by an individualist, by a

free man. The only thing that guarantees the patient's freedom is the doctor's freedom. If some third party has the power to enforce the length of time a doctor works on a patient and the number of dollars which are charged, that doctor is not a free man.

“Our present lay investigator and our present secret committee probably never realized it, but they have in their hands a perfect machine to grab the medical power in this community. As many old rules of medical ethics amply testify, the faith of patients in their doctor is easily shaken by other doctors. What will a patient think of you if an official committee of the Society tells him that you didn't do very much for him, you overcharged him, and one [2515] of the reasons it is letting you off easy is because ‘The little patient seems none the worse for her experience’?

“Aside from the general principles that stand against the actions of this secret Grievance Committee, the legal aspect must also be considered. From a legal standpoint, the committee has publicly and effectively attacked my reputation. The statement that neither the time spent on the patient nor the charge made for this time amount to very much can easily be construed by the patient as a case of substandard work at substandard charges. Then the letter ends with the implication that it was fortunate the incompetent medical service did not result in harm to the patient, and leaves to the imagination what further disciplinary action would otherwise have been taken against me.”

I had thought and so construed the letter that this reference to "especially since the little patient seems none the worse for her experience," pertained to her experience in swallowing the pills.

(Reading continued:) [2516]

"The immediate result of this attack is that I have lost the trade of seven people in three related families, each of whom I have treated, and two of whom have chronic diseases of the utmost severity."

Now, I will read just another paragraph here as to what Dr. Robinson thinks should be done about this:

"It seems to me that the following restitution to me and to our Society is in order. The author of the letter to my patient's father should write another letter to him, satisfactory to me, and apologize for the first letter. Every member of the secret Grievance Committee responsible for the injurious letter should be barred from office in our Society for a term of one year. No layman should hold office, executive or administrative, in our Society. Lastly, we should abolish this secret Grievance Committee and elect a Committee on Ethics, specifically instructed to deal only with malpractice and never with fee complaints."

Now, I am not going to refer specifically to others in a series of "Dear Doctor" letters; I will [2517] simply summarize by saying that, in my view, they were not fair and accurate summaries of what was said or what was intended to be said in the letter which the grievance committee sent to Noel Ed-

wards; that they made statements which were not justified and were unduly intemperate; and I recall here in the calmer atmosphere of this trial, Dr. Robinson was obliged in his testimony on more than one occasion to explain his intemperate statements by saying that he perhaps overstated for the sake of emphasis or that he may have been wrought up on the occasion or something of that sort.

I might say that I do not regard this Edwards letter, Exhibit 15, as in any sense a disciplinary action or punitive proceeding, directly or indirectly, of any kind against Dr. Robinson. I think it was just what the evidence showed it was intended to be—an attempt on the part of the newly appointed grievance committee to adjust a minor misunderstanding and difference between a doctor and a patient in the interest of better public relations, and it has been said that this letter, the Noel Edwards letter, was the incident that sparked this whole unfortunate chain reaction, but a spark doesn't amount to much unless it comes in contact with an explosive, and I think the explosive that this spark came in contact with was the temperament and character and viewpoint of Dr. Robinson, and so the whole unexpected explosion resulted. [2518]

Now, judged by ordinary standards, it seems to me, the reaction of Dr. Robinson to the Edwards complaint incident was extraordinary and unexpected. It is hard to understand his insistence that he wanted the original letter, or at least an opportunity to inspect it, and his repeated visits to

College Place to members of the family and to people involved here in their places of work and telephone calls are hard to explain on the basis of the letter in the background, and it is hard to explain his attitude in placing upon Mr. Brooks, as head of the clan, I believe he expressed it, but actually only the father-in-law of the recipient of the letter, the responsibility for producing it.

I do not have, as I conceive it, directly before me the question of the truth or falsity of the Brooks complaint, although the question does bear indirectly upon the question of conspiracy, because if the complaint is genuine and well founded, of course, it would be that much less circumstantial evidence that it was a part of the conspiracy. At least I will say this, that, in my judgment, the plaintiff has not by evidence in this case shown the Brooks complaint to have been false.

The Edwards testimony, it is true that Mr. Edwards at first stated that in telephoning him and informing him of the infection which his father-in-law and [2519] mother-in-law had, he used the word "syphilis" and later on he changed his testimony and said that he conceded that Dr. Robinson had not used that word. I wish to point this out, however, that as I view the record here, at the time that Mr. Edwards made that concession, he was not even under interrogation. It was at the meeting of the board of trustees in which both Mr. Brooks and Dr. Robinson were present and Dr. Robinson was making his statement in answer to the charge of Mr. Brooks and in the course of his statement said that

he had not used the word "syphilis" in talking with Mr. Edwards, and Mr. Edwards, without being interrogated and quite spontaneously, so far as the record shows, spoke up and said: "I will concede that." And Mr. Brooks said: "What is that?" And Mr. Edwards said: "I will concede that Dr. Robinson did not use the word 'syphilis.'" It shows at least the disposition of Mr. Edwards to be fair and to make the concession where he felt he had been mistaken, and I think the position as it has been throughout, that he did communicate and even telling of a virus which might affect the children and affect others, would, I think it may be inferred, carry the information as to what the nature of the disease really was.

But, at any rate, I think we have to take into consideration that in the making of this Edwards complaint and the Brooks complaint, that so far as it concerned the [2520] actual incident of what Dr. Robinson said to the custodian of the child in the telephone conversations, it was either first or double hearsay, because I think Mrs. Edwards didn't hear the conversation when she made the original complaint to Mr. Fullerton; she was stating what she understood had been said by Dr. Robinson to somebody else; and then Mr. Brooks certainly had no first-hand knowledge, and when he made the complaint before the board of trustees of the medical society so far as the Edwards incident was concerned, he was probably telling them what Mrs. Edwards had told him that somebody had told Mrs. Edwards, so there was a great deal of opportunity,

as we know in conduct of court proceedings, for inaccuracies to creep in, mistake to creep in a situation of that sort.

Now, with reference to the American Medical Association decision, as I understand the attitude of the defendants here, they are not questioning the finality of that decision, nor am I. It was provided for in the bylaws of the local society that an appeal could be taken to the Judicial Council of the AMA, and when that appeal was taken and the local society was reversed, that reversal became final so far as the right to reinstatement of the plaintiff was concerned. The bylaws of the local society provided, however, and I think he is bound by them, it is in the nature of a contract between the society and its members, [2521] that if he is suspended or expelled by the local society, he shall remain in that status and not be eligible for membership or not be a member of the society until the appeal had been determined, and assuming that the decision of the American Medical Association's Judicial Council is final, I don't think that I need to construe it for more than it purports to be, which is a decision purely on the procedural aspects of the expulsion in which it is held that there had not been strict compliance with the procedural requirements, and for that reason the action of the local society was reversed.

I haven't the question before me, I am not reviewing the action of the Judicial Council, I am not deciding whether Dr. Robinson was entitled to reinstatement; I am simply here passing upon the question of whether he is entitled to recover damages

from the officers and trustees of the association who carried through the procedure which was held to be not in accordance with the constitution and bylaws, and, as I pointed out before, I can't believe, until the oracle in San Francisco tells me that I can so believe, at any rate, that the mere fact that there has been procedural defect of insufficiency in the proceedings of the medical society corporation in expulsion of a member, and that that has been found by a higher tribunal of the society, that that automatically and by itself and [2522] per se makes every officer and agent, trustee and member of the grievance committee who participated in any way in the expulsion personally and individually liable for any damages which the expelled member may have suffered by reason of his expulsion. Logically, if that is true, I don't see why we should confine it to the president and the trustees and the members of the grievance committee; it would seem to me it would apply equally to all the members of the society, at least to all those who voted for expulsion; and I don't believe that there would be individual liability unless you can show bad faith or some wrong-doing individually on the part of the individual defendants, and that gets us back to the matter of conspiracy, which I think has not been established in this case.

Now, there are a number of other matters that have been raised here. The application for rehearing, I think that that has to be considered in the light of the situation as it existed and it had devel-

oped up to that time. The trustees, having reason to believe that this was a seriously contested matter and one which might lead to grave consequences, employed capable legal counsel to direct them and to see that all of their procedural steps were properly taken and they thought that they were proceeding step by step just according to the requirements, in accordance with their constitution and bylaws, and then they get [2523] this telegraphic communication that they had been reversed, it is only natural to assume that they were greatly concerned about it and wished to know why and to have a more definite statement and that they wished to procure a rehearing, if one were possible.

Now, it is true, I think, as the record shows here, that there was no specific provision for applying for a rehearing to the Judicial Council of the American Medical Association, but I had thought that any judicial body or any judicial tribunal or one which acts in a quasi-judicial capacity, if it has the power to hear and determine, it must have the inherent power to rehear within reasonable time and in accordance with reasonable procedures. I think that any court has the power to determine, should be able to say: "Well, I don't believe I gave that fair consideration," or "One side didn't have an opportunity to be fully heard, I am going to rehear that," and that is what the American Medical Association decided to do.

I concede that things were done here that wouldn't and shouldn't have been done by lawyers in the matter of personal communications to the court of

individual doctors, to the members of the Judicial Council, and calling attention to a suit that had been started here by the plaintiff against the members of the local society, but we have to remember that these people were doctors and not lawyers [2524] and they couldn't be held to the knowledge or accountability in procedural decorum that might be required of members of the legal profession, and coming at that time as it did and under the circumstances that it did, I can't see that it is sufficient evidence of a conspiracy in the first instance, a wrongful conspiracy in concert of action, ganging up by the members of the local profession to wrongfully oust Dr. Robinson from the society.

And I think the same thing may be said of the statements made by some of the doctors, apparently, that Dr. Robinson appeared to have a persecution complex and showed paranoiac tendencies. Those remarks were ill-advised and unwarranted. Of course, the opinions expressed were wrong, erroneous, but they were made under great stress of a situation that then existed. It is a little difficult for us to sense fully at this time, I think, and I think the reason they should not be held to be actionable here, is that they were made for the most part not openly and publicly and under circumstances which might indicate a desire or a purpose to harm Dr. Robinson, but were for the most part what golf players would call lockerroom talk or they were washroom conversations which the doctors had passing with each other and wondering just what made this fellow Robinson tick, anyway, and why all this volume of letters and

violent reaction against the action of the grievance committee. And [2525] they were mostly that character, except I think there was evidence that one of them expressed the opinion to a lawyer—I assume that that would be regarded at the time, at any rate, as confidential talk with a lawyer—who came in after the expulsion and tried to use his good offices to see if he couldn't do something for Dr. Robinson, and I think the statement the testimony shows was made to him.

And other than that, there was the letter of Dr. Pratt to the plaintiff's father, which was ill-advised and unfortunate, I think, but I was impressed by reading it that it seemed to me to indicate a genuine interest and an affection on the part of Dr. Pratt for this young doctor, a firm conviction that he was injuring himself greatly by his conduct and jeopardizing his professional future, and effort to really help him straighten out. I think that is the interpretation that I would place upon it. I think that we should attribute good motives, rather than bad ones, to people if the chances are equal. And these unfortunate expressions of the doctors about Dr. Robinson's mental state, as I say, insofar as they implied mental abnormality, they were erroneous, but looking at this record, they are not without some substance of foundation, because of the unusual reaction of Dr. Robinson, the unusual tone of his letters and the volume of his letters, and the manner in which he insisted upon applying to everybody, inferring the purpose on [2526] the part of every-

body, to harm him gave some substance to a diagnosis of persecution complex tendency.

Now, this letter of Dr. Pratt's is the last exhibit I am going to refer to at any length. It is a letter written on May the 24th, two days after the expulsion meeting of May the 22nd, to Dr. Robinson's father:

“Dear Doctor Robinson:

“Some uneasy circumstances have prevailed here during the last year in connection with Miles and I do not know whether or not he has been confident with you in regard to things. Further, I do not know even that Ruth Ann, his wife, is aware of the controversies which have beset him.

“At the beginning of the trouble which to my mind was insignificant I tried to dissuade Miles from pursuing his course but to no avail. Miles began writing voluminous letters to all the profession setting forth his views. These letters were followed by others. Investigations were made. Numerous meetings called and finally the State Grievance Committee was called in. Some six or eight doctors came to Walla Walla to investigate the matter on April 22nd last. [2527] Miles agreed to be there but finally refused on the grounds he was too busy with his practice and that he had no confidence in the state committee which I believe is composed of impartial and reputable men.

“This state committee heard all the evidence available and after due consideration found Miles guilty and recommended he be suspended for six months from the local medical society. In view of the find-

ings the local medical society called a special meeting and confirmed the recommendations.”

Well, that isn't quite accurate, but it is in Dr. Robinson's favor. They didn't take the recommendations, but voted on expulsion instead of suspension.

(Reading continued:)

“Of course this outcome is lamentable and we his friends feel we are powerless to influence Miles who I understand is bent on pursuing the matter in the courts which I fully believe would be futile.

“In view of the situation as it stands Mrs. Pratt and other doctors feel that Miles is suffering from some persecution complex, at least of that nature and that it is [2528] expedient that he be persuaded to drop the feud and devote his talents which he undoubtedly has, to his work.

“Miles has very considerable ability and a most respected wife and family and perhaps it would clean up things if you could find your way clear to come out in the near future.

“Do understand I feel for the boy tremendously but believe his course to be wrong and that I hope your fatherly advice will assist in resolving the difficulties.”

Now, I think what Dr. Pratt was trying to do was to get the father to come out and investigate this thing for himself and see if he could do something to assist in the tragic outcome of this controversy the son was having with the society. To me, it has every evidence of the sincere but perhaps misguided efforts of a volunteer Good Samaritan.

Now, so far as the St. Mary's Hospital is concerned, I haven't the Washington citation in mind—it was given to me by counsel for St. Mary's and I have examined the case—it seems to me that it lays down the rule here in Washington that a private hospital in its discretion may reject applications for membership, and what happened here, in effect, was that after Dr. Robinson came back and was [2529] reinstated in the society and applied for readmission to the staff of St. Mary's, his admission was turned down. Now, I concede that the hospital would not have the right to arbitrarily or for improper motive or improper reason reject an application, but I think the prima facie rejection by a private hospital does not give rise to a cause of action unless the plaintiff can show that there was some abuse of discretion, and on that basis, since there was none shown here, I think the motion should be granted as to St. Mary's, as well as the others.

The motions for dismissal will be granted and findings may be submitted in line with the rather sketchy announcement of views which I have made here, but I think they indicate my view of the evidence, oral and documentary, in this case.

Court will now adjourn. [2530]

[Title of District Court and Cause.]

CERTIFICATE OF THE CLERK

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals, except as otherwise designated, filed in the above cause as called for in Appellant's Designation filed on September 11, 1956.

Date of Filing & Title of Documents

May 7, 1954—Complaint.

Jan. 11, 1955—Answer of Defendants R. W. Stevens, et al.

Jan. 14, 1956—Answer of St. Mary's Hospital.

Jan. 17, 1955—Answer of Washington State Medical Assn.

Dec. 27, 1955—Motion for Change of Venue.

Feb. 23, 1956—Supplemental Affidavit in Support of Plaintiff's Motion for Change of Venue.

March 21, 1956—Answer of Walla Walla General Hospital.

March 29, 1956—Pretrial Order.

April 26, 1956—Findings of Fact and Conclusions of Law.

April 26, 1956—Supplemental Findings of Fact and Conclusions of Law relating to St. Mary's Hospital.

May 4, 1956—Judgment.

May 14, 1956—Motion for Amended and Additional Findings of Fact and Conclusions of Law.

May 22, 1956—Order Amending Findings of Fact.

May 22, 1956—Transcript of Proceedings at the Trial.

May 22, 1956—All Exhibit admitted in evidence at the trial (under separate cover).

June 20, 1956—Notice of Appeal.

June 20, 1956—Bond for Costs on Appeal.

July 13, 1956—Motion for Order Extending Time to Docket Record on Appeal.

July 17, 1956—Order Extending Time to Docket Record on Appeal to 9-15-56.

Sept. 11, 1956—Order Extending Time to Docket Record on Appeal to 9-18-56.

Sept. 11, 1956—Statement of Points on Appeal.

Sept. 11, 1956—Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima in said district this 14th day of September, 1956.

[Seal]

STANLEY D. TAYLOR,

Clerk, United States District Court, Eastern District of Washington.

By /s/ THOMAS GRANGER,
Deputy.

[Endorsed]: No. 15280. United States Court of Appeals for the Ninth Circuit. Miles H. Robinson, Appellant, vs. R. W. Stevens, et al., Appellees. Transcript of Record. Appeal From the United States District Court for the Eastern District of Washington, Southern Division.

Filed: Septemeber 15, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15280

MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

STATEMENT OF POINTS ON APPEAL

To: Mr. Edward L. Rosling,
Eggerman, Rosling & Williams,
918 Vance Building,
Seattle, Washington;

Mr. Herbert H. Freise,
Jones Building,
Walla Walla, Washington;

Mr. William Keylor Smith,
Baker Building,
Walla Walla, Washington;

Mr. John C. Tuttle,
Denny Building,
Walla Walla, Washington;

Mr. Judd D. Kimball,
707 Baker Building,
Walla Walla, Washington;
Attorneys for Appellees.

You Are Hereby Notified that the appellant intends to rely upon the following points in connection

with his appeal from the judgment of dismissal entered in the District Court in the above-entitled action:

1. The Court erred in granting the motion of the appellees under Rule 41(b) to dismiss the complaint, and in dismissing the complaint.

2. The Court erred in not exercising its sound discretion under Rule 41(b) to overrule the motion to dismiss the complaint on the ground that the record in this case is so voluminous, running to thousands of pages, and the exhibits so numerous, being more than five hundred, that the purport of much of the testimony and documentary evidence could not be assayed by the Court until the Court had the opportunity to analyze and compare in a process requiring much more time than the few hours available before ruling on the motion, and because under the circumstances, the Court was not physically in a position to tell whether or not it had been established in the evidence that the appellant had proven his case, and that the motion therefore ought to be denied instead of sustained.

3. The Court erred as a matter of law in not holding that the evidence in the record made out a prima facie case that the appellees acted in a conspiracy against the appellant and that the said conspiracy was operated maliciously and unlawfully against the appellant to his damage.

4. The Court erred as a matter of law in not ruling that even if a conspiracy were not established

by the evidence in the record, there still remains relief for the appellant under negligence or simple tort on the part of some or all of the appellees on account of their malice, negligence and carelessness in instigating and proceeding with disciplinary action against the appellant.

5. That the evidence, documentary and testimonial, preponderates against the findings of the trial court.

/s/ ROBERT J. McNICHOLS,
JOHN F. SEMBOWER,
Attorneys for Appellant.

[Endorsed]: Filed September 27, 1956.



In the
United States Court of Appeals
For the Ninth Circuit

MILES W. ROBINSON, Appellant,
vs.
R. W. STEVENS, et al., Appellees.

Appeal from the United States District Court
for the Eastern District of Washington,
Southern Division

HONORABLE SAM M. DRIVER, Judge

BRIEF OF APPELLEE,
St. Mary's Hospital

WM. KEYLOR SMITH
401 Baker Building,
Walla Walla, Washington
Attorney for Appellee,
Sisters of Charity of the House
of Providence, a corporation,
known in this action as
St. Mary's Hospital.

FILED

III 26 1957



In the
United States Court of Appeals
For the Ninth Circuit

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In the
United States Court of Appeals
For the Ninth Circuit

MILES W. ROBINSON, Appellant,

vs.

R. W. STEVENS, et al., Appellees.

**Appeal from the United States District Court
for the Eastern District of Washington,
Southern Division**

HONORABLE SAM M. DRIVER, Judge

**BRIEF OF APPELLEE,
St. Mary's Hospital**

**STATEMENT OF PLEADINGS AND FACTS
RELATING TO APPELLEE,
ST. MARY'S HOSPITAL**

Plaintiff's (Appellant's) Complaint (R.3 et seq.) charged all the defendants generally with certain acts leading up to the termination of his hospital privileges (Para. XXIX, R.28). He alleged that defendant, St. Mary's Hospital, fur-

ther refused to readmit him to practice in that hospital (Para. XXX, R.29). In essence, the complaint charges a conspiracy among the defendants against him, although the complaint is not clear as to the part played by this hospital, except that the hospital terminated his right to practice therein and never readmitted him. Plaintiff, in his original complaint, specifically excluded both hospitals in his prayer for damages. His subsequent oral motion to amend was granted (Footnote, R. 35, appellant's brief pg. 2) with the result that both hospitals were included in the prayer for damages.

The separate answer (R. 43 et seq.) of St. Mary's Hospital contained a denial of the matters set forth in the complaint based upon a lack of knowledge as to those matters by that answering defendant. The allegations of the complaint wherein it was alleged that the hospital defendant entered into a conspiracy were specifically denied.

At the trial before the Court, and at the close of Plaintiff's case, Defendant St. Mary's Hospital, moved for an involuntary dismissal under Rule 41 (b) Federal Rules of Civil Procedure. (R 1625). This motion was granted and separate and supplemental Findings of Fact and Conclusions of Law as to St. Mary's Hospital (R. 107 et seq.) were entered. Judgment of Dismissal as to all of the defendants was thereupon entered. (R. 113).

In the interest of brevity, Appellee, Sisters of Charity of the House of Providence (referred to in this brief as St. Mary's Hospital) hereby adopts the Statements of Fact contained in the briefs of the other Appellees. Only those facts specifically relating to this defendant hospital are set forth herein.

Appellee St. Mary's Hospital is owned and operated by The Sisters of Charity of the House of Providence, a non-profit, charitable corporation of the State of Washington. (Pre-Trial Order P. 8, R. 82). On May 22, 1951, appellant was permanently expelled from membership in the Walla Walla Valley Medical Society. On May 25, 1951 St. Mary's Hospital was advised by the Secretary of the Medical Society that appellant was no longer a member of the Society. (Ex. 119). The Constitution and By-Laws of the Medical Staff of St. Mary's Hospital adopted September 28, 1950, (Ex. 299) required that a doctor to be eligible for membership on the Medical Staff of the Hospital must be a member of the Walla Walla Valley Medical Society. Membership on the Medical Staff of the Hospital was required before a doctor could practice in the hospital or attend patients therein. Appellant, prior to his expulsion from the society, was aware of this. (R. 393, Ex. 122). By letter dated June 21, 1951 (Ex. 127) Appellant was notified by the hospital that, in accordance with the provisions of Article III, Section 3 of the Constitution and By-Laws

of the Medical Staff, his membership on the staff of the Hospital was cancelled and that, as a consequence, he was not privileged to attend patients in the hospital.

On February 18, 1952 (Ex. 167) Appellant advised the hospital of the decision of the Judicial Council of the AMA reversing his expulsion from the local society and requested reinstatement to the Medical Staff. Some "week or weeks" (R. 452) later, Appellant had a telephone conversation with Sister Joseph, the then administrator of the hospital, in which he was advised that he could not be re-admitted to the medical staff at that time. On June 25, 1952, Appellant as Plaintiff commenced an almost identical action to the instant case in the Superior Court of the State of Washington against St. Mary's Hospital and the other defendants in this cause. On July 21, 1952 Appellant was reinstated to membership in the Society. On numerous subsequent occasions, and during the pendency of his proceeding in the State Court, Appellant requested reinstatement to the hospital's staff (Exs. 175, 218, 219). Appellant has not been re-admitted to hospital privileges at St. Mary's.

ARGUMENT

Insofar as St. Mary's Hospital is concerned there appear to be the following questions involved:

1. Did the hospital, its agents or officers, conspire with any of the other defendants to procure Appellant's expulsion from the Medical Society and his subsequent loss of hospital Staff privileges?

To ask the question is virtually to answer it. The record is bare of any indication that the hospital or its authorities acted in concert with anyone other than to advise Appellant that he could no longer be a member of its staff after being expelled from the Society. This last action was automatic, and required under the Constitution and By-Laws of the Medical Staff, of which Appellant had previously been a member.

2. Did the hospital have the right to continue to exclude Appellant from its Medical Staff and the use of its facilities after his reinstatement in the Medical Society?

The Supreme Court of the State of Washington in an en banc decision has recently disposed of this question. (**Group Health Cooperative of Puget Sound et al., v. King County Medical Society et al., 39 Wn. (2d) 586; 237 P. (2d) 737 (1951).**)

The case was the outgrowth of a battle between the King County Medical Society and a cooperative organized for the purpose of furnishing contract medicine. One defendant, Swedish Hospital, a non-profit corporation, was alleged to have entered into a conspiracy with the Medical Society and others. That the part played

by defendant hospital in such conspiracy had consisted of the adoption of by-laws and regulations, submitted by other defendants, under which access to the hospital was denied to any physician not a member of the Medical Society; i. e. presumably physicians not members of the Society but employed exclusively by the cooperative on a salaried basis. The Court said, at page 667 Washington Reports:

“The question of whether appellants have established a cause of action against respondent Swedish Hospital can be quickly disposed of. Appellants base their case against Swedish Hospital on the claim that this institution was a part of the general combination or conspiracy to restrain competition. After an examination of the evidence, we have reached a contrary conclusion, as heretofore noted. Absent this element, there is no ground for relief at law or in equity.

“Private hospitals have the right to exclude licensed physicians from the use of their facilities, such exclusion resting within the discretion of the managing authorities. *People v. The Julia F. Burnham Hospital*, 71 Ill. App. 246; *Harris v. Thomas*, 217 S. W. (Texas) 1068; *Levin v. Sinai Hospital of Baltimore City*, 186 Md. 174; 46 A. (2d) 298.” (Emphasis supplied)

In view of *Erie Ry., Co. v. Tompkins*, 304 US 64; 58 S. Ct. 817, the holding of the Washington Supreme Court must be held to be the law in this case.

There is an exhaustive annotation on the sub-

ject of "Exclusion of or discrimination against physician or surgeon by hospital authorities" in 24 ALR 2d 850, wherein it is said (page 852):

"In the case of private hospitals, it is generally held that the exclusion of a physician or surgeon from practicing therein is a matter which rests in the discretion of the managing authorities."

Cases from seven jurisdictions are cited in support of the foregoing proposition.

"It seems to be the practically unanimous opinion that private hospitals have the right to exclude licensed physicians from the use of the hospital, and that such exclusion rests within the sound discretion of the managing authorities."

26 Am. Juris., Hospitals, Pg. 592, Sec. 9

3. Granting, therefore, that the hospital in the discretion of its managing authorities had the right to continue to exclude Appellant from its Medical Staff, was that decision a part of the alleged conspiracy or from improper motives?

The learned trial judge in his oral decision said: (R. 1663)

"Now I concede that the hospital would not have the right to arbitrarily or for improper motive or improper reason reject an application, but I think the prima facie rejection by a private hospital does not give rise to a cause of action unless the plaintiff can show that there was some abuse of discretion, and on that basis, since there was none shown

here, I think the motion should be granted as to St. Mary's, as well as the others."

There is no evidence in the record (other than Appellant's suspicion) to indicate that the refusal to reinstate Dr. Robinson was the result of a conspiracy or that such refusal was occasioned by reasons other than those which the discretion of the managing authorities believed to be in the best interests of the hospital.

The judgment of the United States District Court should be affirmed.

Respectfully submitted,

WM. KEYLOR SMITH

Attorney for Appellee, Sisters of
Charity of the House of
Providence, a Corporation, known
in this action as St. Mary's Hospital

United States Court of Appeals
For the Ninth Circuit

MILES H. ROBINSON, *Appellant*,

vs.

R. W. STEVENS, *et al.*, *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION

**BRIEF FOR APPELLEE, WASHINGTON STATE
MEDICAL ASSOCIATION**

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FILED

AUG 14 1957



United States Court of Appeals
For the Ninth Circuit

MILES H. ROBINSON, *Appellant*,

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION

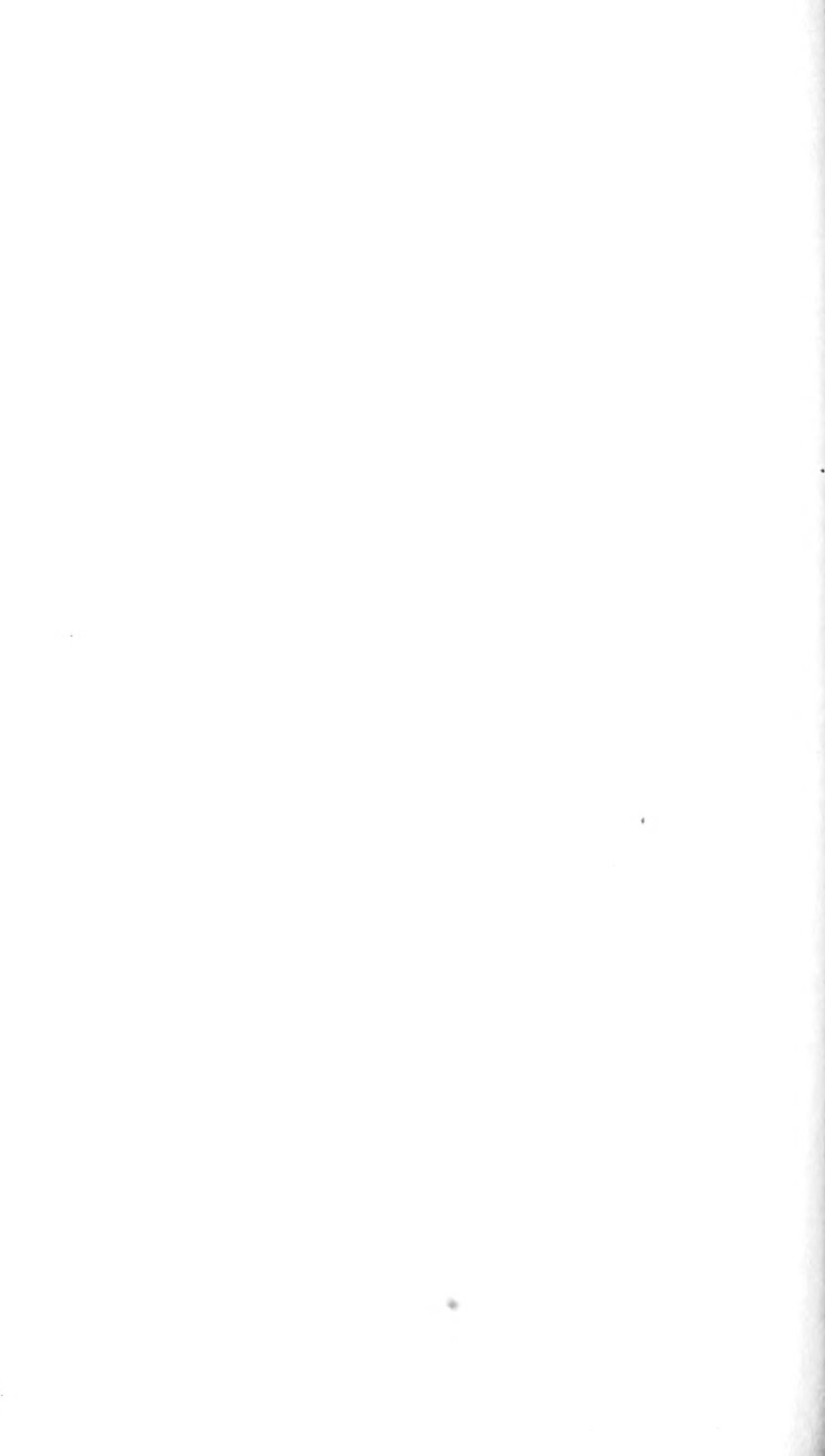
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**United States Court of Appeals
For the Ninth Circuit**

MILES H. ROBINSON,	<i>Appellant,</i>	}	No. 15280
vs.			
R. W. STEVENS, <i>et al.</i> ,	<i>Appellees.</i>		

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION

**BRIEF FOR APPELLEE, WASHINGTON STATE
MEDICAL ASSOCIATION**

Washington State Medical Association adopts the jurisdictional statement and counter-statement of the case contained in the Answer Brief of the principal defendants. Reference to additional facts relating to this appellee and not appearing in the Society's brief will appear as required in the argument which follows.

QUESTIONS PRESENTED

The complaint was drawn on the theory of a conspiracy. At the time of trial the appellant injected an additional theory as appears in the pretrial order, namely, a liability for damages was claimed to exist based on the mere fact of the wrongful expulsion. The appellees contended, however, that such a tort liability could only exist if the expulsion "had been brought about in bad faith, that is, out of malice and not actually for the cause alleged in the charge brought against

the accused member'' (Appellant's Brief, p. 5). The trial court found that no conspiracy existed (Finding No. XIV) and that no tort liability existed since all of the procedural steps in the expulsion of the plaintiff Robinson were undertaken by the defendant Medical Society and defendant Medical Association in good faith and in substantial compliance with the respective constitutions and by-laws as they then existed.

The Designation of Points on Appeal has apparently been abandoned by appellant as no reference to them has been made in the opening brief. No specification of errors as required by Rule 18 has been set forth. In lieu thereof appellant lists eight questions presented, all of which relate to the question of bad faith with the resulting claimed error on the part of the trial court in not making certain findings of fact. It is difficult to answer a brief prepared as this one was by a lay person and in complete disregard or ignorance of the rules of the game. However, it is evident that appellant has abandoned any effort to claim error based on the trial court's finding that a conspiracy did not exist. Appellant's entire brief is devoted to the contention that bad faith in the expulsion proceedings existed and that the trial court should have so found.

Abandonment of the conspiracy theory and complete reliance on the theory of liability for expulsion in bad faith is confirmed not only by a reading of the appellant's brief but by appellant's own expressed intent for at the beginning of the brief, page 2, under the heading of Questions Presented, the appellant states:

''Appellant contends that the actions against

him were performed in bad faith and the lower court erred in not finding, etc.”

In fact, the only legal citation in the entire brief is the reference to an A.L.R. annotation on page 5 relating to liability for an expulsion brought about in bad faith. This appellee will, therefore not discuss the conspiracy angle of this case in detail but will confine the argument to the contention that liability on the part of this appellee exists because it acted in bad faith and out of malice in bringing about the expulsion of Dr. Robinson.

ARGUMENT

We preface our argument with reference to the following controlling principles. Rule 52A (Rules of Federal Procedure) provides in part:

“Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses.”

This Court has had many occasions to apply this rule. We shall not add to the list of illustrative citations contained in the Society’s brief but shall quote only from the text of Barron and Holtzoff, Federal Practice and Procedure, Section 1131, where the following appears:

“On appeal the Appellate Court does not retry the case. The findings of fact are presumptively correct and will not be set aside unless clearly against the weight of the evidence based on an erroneous view of the law. Consequently an appellant seeking to overthrow the findings has the burden of presenting a proper record to the court of

appeals showing that the evidence compelled a finding in his favor. The Appellate Court takes that view of the evidence which is most favorable to appellee who prevailed at the trial court. It assumes that all conflicts in the evidence were resolved in favor of appellee.”

The trial court’s findings on the matter of good faith of this appellee were as follows:

“All of the procedural steps in the expulsion of the plaintiff Robinson were undertaken by the defendant Medical Society and defendant Medical Association in good faith and in substantial compliance with their respective constitutions and by-laws as they then existed and were under the direction of capable legal counsel; that the acts of the individual doctor defendants in connection with the expulsion proceedings were done and performed as officers, agents and representatives of the respective defendant medical corporations, were done in good faith in accordance with their duty as they best saw it and were consistent with the lawful and proper purpose of dealing fairly with the very serious charge of misconduct and in compliance with the constitutions and by-laws of the respective organizations.” (Finding No. XIII)

We now address ourselves to the facts and our first point is to emphasize that the State Association had no part whatever in the expulsion of Dr. Robinson. The constitution and by-laws of both the State Association and the Walla Walla County Society make it perfectly clear that the Society is completely autonomous and only the Society has the authority to expel one of its members. The following quotations are taken from the State constitution and by-laws:

“The component Society may expel, suspend, censor or otherwise discipline a member for such causes and under such procedure as is stated in the Society’s constitution and by-laws * * *.” — Article IV, Section 4-D, Const.

“Subject to the provisions of Article IV, Section 4, of the constitution each component Society is the sole judge of the qualifications of its members and the acceptance of applicants is wholly at the pleasure of the component Society * * *.” — Chapter 1, Section 7, By-Laws.

“A member is not in good standing within the meaning of the constitution and these by-laws (b) if he has been suspended or expelled by his component society * * *.” — Chapter 2, Section 2 (b), By-Laws.

“A member of a component Society censured, suspended, expelled or otherwise disciplined by his component Society may appeal * * *.” — Chapter 5, Section 3, By-Laws.

Nowhere in the constitution or by-laws of the State Association is there any statement or even an inference which gives the State Association any right or power to expel any member of either the State Association or the local Society. If, however, the Society expels a member he automatically loses his membership in the State Association because of the operation of Article III, Section 2, of the State Constitution which provides in part:

“The active members of this association are all the active members in good standing in the component societies and from whom or on whose behalf the required annual dues or special assessments have been received by the secretary-treasurer of this association in accordance with the applicable provisions of the by-laws.”

The State Association not only had no power to expel Dr. Robinson but it did not even purport to do so. The State Grievance Committee made the recommendation to the Society that the Society in compliance with its constitution suspend Dr. Robinson for six months. The exact wording was as follows :

“We further recommend to the Walla Walla Valley Medical Society that a regular meeting of the Society be held in conformance to the by-laws and constitution of that Society that Dr. Robinson be sentenced to a suspension of his membership in that Society for the period of six months at the end of which time his ethical conduct should be reviewed and if it is found that it has been satisfactory he may be reinstated.” — Exhibit 104.

The Society did not follow the recommendation of the State Grievance Committee as to penalty. In compliance with its constitution and by-laws (Finding No. XIII) it expelled Dr. Robinson. Since the State Association had not expelled Dr. Robinson but had merely made a recommendation to the Society, it was with considerable surprise that it learned through an informal letter from Dr. Cunniffe, Chairman of the AMA Judicial Council, written to Dr. Ross Wright, a member of the State Association, that Dr. Robinson had appealed from the action of the State Association in expelling him, asking for six copies of the Association's answer brief and advising that the matter would be heard at the AMA annual meeting in Los Angeles on December 2, 1951 :

“This is to inform you that Dr. Miles H. Robinson is prosecuting his appeal before the Judicial Council of the American Medical Association from

the decision of the Washington State Medical Association expelling him from membership * * *.''
— Exhibit 145.

Since the State Association had not expelled Dr. Robinson, its legal counsel wrote to Dr. Cunniffe on the next day, November 20, 1951, Exhibit 149, explaining that the State Association had not expelled Dr. Robinson, that it had no power under its constitution and by-laws to do so, quoting the applicable provisions, that he had been expelled by the local Society and that the Society should bear the burden of the preparation of the brief. For this reason the State Association did not file an appearance or submit any brief in the appellate proceedings of December 2, 1951.

Through March 14, 1951, only five letters passed between the Society and the State Association:

Fullerton to Neill, Executive Secretary of the State Association (Exhibit 23), October 16, 1950, inquiring if the State Grievance Committee had yet been organized;

Neill's answer to Fullerton on October 17, 1950 (Exhibit 24), advising that the organization of the State Grievance Committee had not yet been completed;

Fullerton to Neill, December 16, 1950 (Exhibit 58), referring the Brooks against Robinson matter to the State Grievance Committee;

Neill's answer to Fullerton January 4, 1951 (Exhibit 62), advising that the Grievance Committee was still in the process of organization;

Rounds, Secretary of the State Grievance Committee, March 14, 1951 (Exhibit 67), advises all parties that the committee will hear the complaint on April 22, 1951, at Walla Walla.

These were all routine letters, written in the ordinary and usual conduct of the affairs of the State Association. Up to the time of the receipt of the letter of December 16, 1950 referring the Brooks matter to the State Grievance Committee, the name of Dr. Robinson had not even been mentioned. The State knew nothing about the dispute. During this same period Robinson had resigned from the Bureau, the Edwards complaint had been lodged, the letter of September 30, 1950 had been written, the Brooks complaint had been filed, the Society's meeting of November 21, 1950 had been held, in fact nearly all of the events leading up to the expulsion had taken place, all without any notice to or knowledge on the part of the State Association. Only the suspicious mind of a Dr. Robinson would dare to say that the State Association had participated in all of these events in bad faith and with malice towards Dr. Robinson. There is not one syllable of testimony to sustain such a charge.

The history of the organization of the State Grievance Committee was as follows: In September, 1950, the House of Delegates of the State Association amended its by-laws to provide for a grievance committee and further providing that rules and regulations when approved by the State Board of Trustees should become binding upon all members ten days after publication in the official journal of the association. These rules were published in the official journal (Northwest Medicine) in the February, 1951 issue, Exhibit 66, distributed February 16, 1951. The personnel of the committee was announced March 2, 1951 (Exhibit 398), and on March

14, 1951, Dr. Rounds gave notice of the Robinson hearing to be held April 22, 1951, at Walla Walla.

During the period between March 14 and April 22 there was considerable correspondence—13 letters, but it all related to notices of the meeting, arrangements for a meeting place, arranging for attendance of witnesses and a court reporter, and other similar matters relating to the mechanics of the meeting. There is not a syllable indicating any bad faith on the part of the State Association or anything to infer that they were acting otherwise than in a conscientious attempt to honestly and fairly perform the functions of the committee.

It is interesting to note that during this period Dr. Robinson lodged a complaint with the State Grievance Committee against the Walla Walla Society November 13, 1950 (Exhibit 41) and when he was advised by Dr. Rounds on March 14, 1951, that this complaint would also be heard on April 22, 1951, he expressed real gratification that the State Grievance Committee had accepted jurisdiction and would hear both his complaint against the Society and the Brooks complaint against himself and that he would attend the meeting (Exhibit 83, April 9, 1951). However, he subsequently changed his mind and on April 13, 1951 (Exhibit 92) he stated that he would not attend the meeting because:

1. "Your statement that Mr. Fullerton has been in charge of all the arrangements for this hearing seriously unsettles my confidence in a fairly conducted meeting. If Fullerton and others of his ilk, all avid proponents of insurance medicine which I think ruins our profession, are to have so much influence I can guess what kind of treatment I will get based on samples to date."

2. "I have already attended one long hearing and given what I think will stand as adequate answers, clearing me of alleged unethical conduct in the Brooks affair."

3. "I really cannot spare the time from my growing practice for this kind of thing. It almost seems as if the more I stand up for my rights, the more popular I become with the public here. Therefore I will not attend your hearing on April 22, 1951."

The meeting of April 22, 1951, was held without him.

The Judicial Council held that Robinson's expulsion was wrongful for procedural reasons. The reason for this decision appeared to be that the State Board of Trustees had by its action in approving the recommendation of the State Grievance Committee, disqualified itself as an intermediate appellate body. One of the original rules of the committee, published in Northwest Medicine in February, 1950, (Rule 12) provided:

"Subject to approval of the Board of Trustees it may recommend to the component Society of which the accused physician is a member that action be taken by the Society for his expulsion, suspension, or reprimand * * * ."

In view of the Committee's recommendation of a suspension, compliance with this rule required the submission of the Committee's Findings to the Board of Trustees and this was done on May 5, 1951. Whether this rule actually disqualified the Board of Trustees from sitting as an intermediate appellate body or not, is immaterial to the issues in this case. So long as it remained a part of the by-laws of the State Association the State Grievance Committee was required to comply with it and the action of the Grievance Committee in

submitting its recommendation to the Board of Trustees for approval cannot possibly be viewed as action taken in bad faith. The phrase "subject to the approval of the Board of Trustees" was subsequently stricken from the by-laws, but in May of 1951 it was a part of the by-laws of the State Association and compliance with the rule was mandatory. Compliance did not indicate bad faith. Rather it illustrated meticulous efforts of the Grievance Committee to act in strict conformance with the governing rules of the organization.

With the submission of the Grievance Committee's recommendation to the Society, the State Association drops out of the picture, with the exception of one letter, until November 19, 1951, when it received word from Dr. Ross Wright that Dr. Robinson had appealed to the Judicial Council. The single exception is a letter from the President of the component Society to the President of the State Association May 24, 1951 (Exhibit 115) formally advising of Dr. Robinson's expulsion by the Society on May 22, 1951.

There is some additional correspondence involving the State Association subsequent to the first decision of the Judicial Council on February 1, 1952, but up to that date we have outlined all of the correspondence between the State and the Society or any of its representatives.

We have not made any attempt to answer all of the arguments contained in appellant's brief. There are many matters referred to which have been ignored in this brief because they obviously do not affect the

State Association. While appellant has used the word "appellees" in the plural throughout his brief, the context shows that the State Association was not intended to be included. We have, therefore, ignored such matters as the charges of bad faith in connection with the alterations in transcripts of Society meetings, the actions taken at Society meetings, the charges of mental illness, action taken on the Edwards complaint, the Pratt letter to appellant's father, and other similar matters.

CONCLUSION

The correspondence and actions we have outlined constitute the evidence upon which appellant would have this court overrule the findings of the trial court that no conspiracy existed and that everything done by the officers of the State Association "were done in good faith in accordance with their duty as they best saw it and were consistent with the lawful and proper purpose of dealing fairly with the very serious charge of misconduct and in compliance with the constitutions and by-laws of the respective organizations." (Finding No. XIII.)

We submit that there was no evidence whatever upon which the trial court could have found

- (1) that the State Association expelled Dr. Robinson, or
- (2) that the State Association acted in bad faith with malice and not actually for the cause alleged in the charge brought against the accused member (appellant's brief, page 5).

Certainly when we consider the requirement of Rule

52A, appellant has wholly failed to sustain his burden of proving that the Findings of the trial court are “clearly erroneous.”

The State Association respectfully submits that the judgment of the trial court should be sustained.

Respectfully submitted,

EDW. L. ROSLING

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*Attorneys for Washington State
Medical Association.*







